Supreme Court, U. S.
FILED
MAR 14 1979
MICHAEL RODAK, JR., CLERK

in the

Supreme Court

of the

United States

CASE NO. 78-1401

CITY OF MIAMI,
a Florida municipal corporation,
Appellant,

vs.

ST. JOE PAPER COMPANY,
a Florida corporation;
SOUTHEAST PROPERTIES, INC.,
a Florida corporation;
HUGH E. MATHESON, JR., individually;
and SALLY S. DOMMERICH,
formerly Sally S. Matheson, individually,
Appellees.

ON APPEAL FROM THE FLORIDA SUPREME COURT

JURISDICTIONAL STATEMENT

OF COUNSEL
JESSE C. JONES
Suite 1820, One Biscayne Tower
Two South Biscayne Boulevard
Miami, Florida 33131
March 14, 1979

GUY B. BAILEY, JR.
Attorney for Appellant
Suite 1820, One Biscayne Tower
Two South Biscayne Boulevard
Miami, Florida 33131
(305) 374-5505

TABLE OF CONTENTS

	Page
INDEX OF AUTHORITIES	ii
OPINIONS BELOW	2
JURISDICTION	3
QUESTIONS PRESENTED	4
CONSTITUTIONAL PROVISIONS AND STATUTE	5
RAISING THE FEDERAL QUESTIONS	14
STATEMENT OF THE CASE	15
THE QUESTIONS ARE SUBSTANTIAL	17
Operation of Florida's Marketable Record Titles Act	18
Contract Clause	21
Taking	29
Due Process	30
CONCLUSION	33

INDEX OF AUTHORITIES

Judicial Decisions

Allied Structural Steel Co. v. Spannaus,
98 S.Ct. 2716 (1978) 17, 18, 21, 22, 23, 30, 32

American Land Co. v. Zeiss,
219 U.S. 47 (1911) 19, 26

Anderson National Bank v. Luckett,
321 U.S. 233 (1944) 31

Armstrong v. United States,
364 U.S. 40 (1960) 30

City of Miami v. St. Joe Paper Co.,
347 So.2d 622 (Fla.3d DCA 1977) 2

City of Miami v. St. Joe Paper Co.,
364 So.2d 439 (Fla. 1978) 2, 15, 16, 17, 21

City of New York v. New York, N.H.&H.R. Co.,
344 U.S. 293 (1953) 32

El Paso v. Simmons,
379 U.S. 497 (1965) 18

Exchange National Bank v. Lawndale National Bank,
243 N.E.2d 193 (Ill. 1968) 20, 21, 24, 28

Fletcher v. Peck,
10 U.S. 87 (1810) 22

INDEX OF AUTHORITIES (Continued)

Home Building & Loan Assoc. v. Blaisdell,
290 U.S. 398 (1934) 23

Jackson ex dem. Hart v. Lamphire,
28 U.S. 280 (1830) 26

Louisville Joint Stock Land Bank v. Radford,
295 U.S. 555 (1935) 29

Mullane v. Central Hanover Bank & Trust Co.,
339 U.S. 306 (1950) 31, 32

Penn Central Transportation Co. v. City of New York,
98 S.Ct. 2646 (1978) 29

Poladian v. Johnson,
85 So.2d 140 (Fla. 1956) 3

Randall v. Kreiger,
90 U.S. 137 (1875) 26, 27

Smith v. Goguen,
415 U.S. 566 (1974) 31

Smith Bros. v. Williams,
100 Fla. 660, 131 So. 335 (1930) 3, 21

T.I.I.F. v. Claughton,
86 So.2d 775 (Fla. 1956) 29, 31

Trustees of Dartmouth College v. Woodward,
17 U.S. 518 22

United States Trust Co. v. New Jersey,
431 U.S. 1 (1977) 17, 18, 22, 24, 28, 30, 32

Vance v. Vance,
108 U.S. 514 (1883) 24, 25, 26

W.B. Worthen Co. v. Kavanaugh,
295 U.S. 56 (1935) 23

Wichelman v. Messner,
83 N.W.2d 800 (Minn. 1957) 19, 20, 24, 27

Wright v. Blocker,
144 Fla. 428, 198 So.88 (1940) 3, 21

Constitutional Provisions

Article I, §10 (Contracts Clause) 5, 15, 18, 21-28

Fifth Amendment (Taking Clause) 5, 15, 29-30

Fourteenth Amendment (Due Process) 5, 15, 30-32

Statutes

Florida Statutes, Chapter 712 ..... 5-13, *passim*

Articles

Barnett, *Marketable Title Acts—Panacea or Pandemonium?*
53 CORNELL L. REV. 45 (1967) 19

Boyer & Shapo, *Florida's Marketable Title Act*
28 U. MIAMI L. REV. 103 (1963) 19

Fratcher, *A Modest Proposal for Trimming the Claws of Legal Future Interests*
1972 DUKE L. J. 517 (1972) 19

Simes, *A Handbook for More Efficient Conveyancing* (1961) 19

Simes & Taylor, *Improvement of Conveyancing by Legislation* (1960) 19

in the

Supreme Court

of the

United States

CASE NO.

CITY OF MIAMI,
a Florida municipal corporation,
Appellant,

vs.

ST. JOE PAPER COMPANY,
a Florida corporation;
SOUTHEAST PROPERTIES, INC.,
a Florida corporation;
HUGH E. MATHESON, JR., individually;
and SALLY S. DOMMERICH,
formerly Sally S. Matheson, individually,
Appellees.

ON APPEAL FROM THE
FLORIDA SUPREME COURT

JURISDICTIONAL STATEMENT

The City of Miami appeals a final order of the Florida Supreme Court, dated October 5, 1978 (rehearing denied, December 14, 1978). That final order affirms a decision of the Court of Appeal, Third District of Florida, dated May 3, 1977. On the City's direct challenge of the constitutionality of Florida's Marketable Record Titles Act (Florida's MRTA) as violative of the Contract Clause, the Fifth Amendment's Taking Clause and the Fourteenth Amendment's due process requirements, the Florida court upheld the act's constitutionality. It therefore held the City divested of its rights under a statutory grant deed of downtown Miami sovereignty land on Biscayne Bay, valued in the tens and perhaps hundreds of millions of dollars.

OPINIONS BELOW

The Florida Supreme Court's opinion is reported at 364 So.2d 439. That opinion approves and upholds the opinion of the Court of Appeal, Third District of Florida, which is reported at 347 So.2d 622.

JURISDICTION

The City sued to quiet its title to parts of a massive state grant of sovereignty land adjacent to the navigable waters of Biscayne Bay. It sought to remove the cloud created by a void 1944 "wild deed"[1] which claimed to convey part of the City's land to one of the appellees.

Despite the City's explicit pleading that Florida's MRTA[2], if construed to divest the City of its property, would violate the specific constitutional provisions here presented, the trial court dismissed the complaint with prejudice.

The City appealed to the Court of Appeal, Third District of Florida. That court affirmed, but invoked a provision of the Florida Constitution, and certified the constitutionality of Florida's MRTA to the Florida Supreme Court "as one passing upon a question of great public interest."

The Florida Bar, the Governor of Florida, the Florida Attorney General, and representatives of Florida's largest mining industries appeared as *amici curiae*. The Florida Supreme Court joined the lower Florida courts in rejecting the City's challenges to constitutionality, affirmed the Court of Appeal, and discharged certiorari.

---

[1]Florida defines a wild deed as one executed by a stranger to the record title, "hung out in the air like Mahomet's coffin". Poladian v. Johnson, 85 So.2d 140, 141 (Fla. 1956). A wild deed is void. Wright v. Blocker, 198 So.88 (Fla. 1940). It conveys no notice. Smith Bros. v. Williams, 131 So. 335 (Fla. 1930).

[2]Fla. Stat. Ch. 712.

All levels of Florida courts having rejected the City's challenges to the Florida MRTA's constitutionality, the City invokes this Court's jurisdiction under Title 28, United States Code §1257(2). This appeal has been filed within ninety days from denial of rehearing below.

QUESTIONS PRESENTED

1. Whether Florida's MRTA, which retroactively and totally divests record owners of their property without notice, based upon void instruments, and absent any emergency or even reasonable necessity, violates Article I, §10, of the United States Constitution, as an impermissible impairment of contract.

2. Whether the operation of Florida's MRTA, which retroactively divests record owners of property without notice or compensation, constitutes an unconstitutional taking in violation of the Fifth Amendment.

3. Whether Florida's MRTA which, unlike the acts of all other states, permits retroactive divestiture without notice, based upon void instruments (wild deeds), unconstitutionally deprives record owners of their property without due process of law in violation of the Fourteenth Amendment.

CONSTITUTIONAL PROVISIONS AND STATUTE

United States Constitution art. I §10:

> No state shall . . . pass any . . . law impairing the obligation of contracts.

United States Constitution amend. V:

> No person shall be . . . deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution amend. XIV:

> . . . nor shall any state deprive any person of . . . property, without due process of law.

Florida Statutes Chapter 712, "Marketable Record Titles to Real Property":

> 712.01 DEFINITIONS — As used in this law:
>
> (1) The term "person" as used herein denotes singular or plural, natural, or corporate, private or governmental, including the state and any political subdivision or agency thereof as the context for the use thereof requires or denotes.
>
> (2) "Root of title" means any title transaction purporting to create or transfer the estate claimed by any person and which is the last ti-

tle transaction to have been recorded at least 30 years prior to the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded.

(3) "Title transaction" means any recorded instrument or court proceeding which affects title to any estate or interest in land.

712.02 MARKETABLE RECORD TITLE — Any person having the legal capacity to own land in this state, who, alone or together with his predecessors in title, has been vested with any estate in land of record for 30 years or more, shall have a marketable record title to such estate in said land, which shall be free and clear of all claims except the matters set forth as exceptions to marketability in §712.03. A person shall have a marketable record title when the public records disclosed a record title transaction affecting the title to the land which has been of record for not less than 30 years purporting to create such estate either in:

(1) The person claiming such estate; or

(2) Some other person from whom, by one or more title transactions, such estate has passed to the person claiming such estate, with nothing appearing of record, in either case, purporting to divest such claimant of the estate claimed.

712.03 EXCEPTIONS TO MARKETABILITY — Such marketable record title shall not affect or extinguish the following rights:

(1) Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title; provided, however, that a general reference in any of such muniments to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them unless specific identification by reference to book and page or record or by name of recorded plat be made therein to a recorded title transaction which imposed, transferred or continued such easement, use restrictions or other interests; subject, however, to the provisions or other interests.

(2) Estates, interests, claims, or charges preserved by the filing of a proper notice in accordance with the provisions hereof.

(3) Rights of any person in possession of the lands, so long as such person is in such possession.

(4) Estates, interests, claims, or charges arising out of a title transaction which has been recorded subsequent to the effective date of the root of title.

(5) Recorded or unrecorded easements or rights, interest or servitude in the nature of easements, rights-of-way and terminal facilities, including those of a public utility or of a governmental agency, so long as the same are used and the use of any part thereof shall except from the operation hereof the right to the entire use thereof. No notice need be filed in order to preserve the lien of any mortgage or deed of trust or any supplement thereto encumbering any such recorded or unrecorded easements, or rights, interest, or servitude in the nature of easements, right-of-way, and terminal facilities. However, nothing herein shall be constructed as preserving to the mortgagee or grantee of any such mortgage or deed of trust or any supplement thereto any greater rights than the rights of the mortgagor or grantor.

(6) Rights of any person in whose name the land is assessed on the county tax rolls for such period of time as the land is so assessed and which rights are preserved for a period of 3 years after the land is last assessed in such person's name.

712.04 INTERESTS EXTINGUISHED BY MARKETABLE RECORD TITLE — Subject to the matters stated in §712.03, such marketable record title shall be free and clear of all estates, interests, claims or charges whatsoever, the existence of which depends upon any act, title transaction, event or omission that occurred prior to the effective date of the root of title. All such estates, interests, claims

or charges, however denominated, whether such estates, interests, claims or charges are or appear to be held or asserted by a person sui juris or under a disability, whether such person is within or without the state, whether such person is natural or corporate, or is private or governmental, are hereby declared to be null and void, except that this chapter shall not be deemed to affect any right, title or interest of the United States, Florida or any of its officers, boards, commissions or other agencies reserved in the patent or deed by which the United States, Florida or any of its agencies parted with title.

712.05 EFFECT OF FILING NOTICE —

(1) Any person claiming an interest in land may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year period immediately following the effective date of the root of title, a notice, in writing, in accordance with the provisions hereof, which notice shall be the effect of so preserving such claim of right for a period of not longer than 30 years after filing the same unless again filed as required herein. No disability or lack of knowledge of any kind on the part of anyone shall delay the commencement of or suspend the running of said 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:

(a) Under a disability,

(b) Unable to assert a claim on his behalf, or

(c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(2) It shall not be necessary for the owner of the marketable record title, as herein defined, to file a notice to protect his marketable record title.

712.06 CONTENTS OF NOTICE; RECORDING AND INDEXING —

(1) To be effective, the notice above referred to shall contain:

(a) The name or description of the claimant and the name and particular post-office address of the person filing the claim.

(b) The name and post-office address of an owner, or the name and post-office address of the person in whose name said property is assessed on the last completed tax assessment roll of the county at the time of filing, who, for the purpose of such notice, shall be deemed to be an owner.

(c) A full and complete description of all land affected by such notice, which description shall be set forth in particular terms and not by

general reference, but if said claim is founded upon a recorded instrument, then the description in such notice may be the same as that contained in such recorded instrument, provided the same shall be sufficient to identify the property.

(d) A statement of the claim showing the nature, description and extent of such claim, except that it shall not be necessary to show the amount of any claim for money or the terms of payment.

(e) If such claim is based upon an instrument of record, such instrument shall be sufficiently described to identify the same, including reference to the book and page in which the same is recorded.

(f) Such notice shall be acknowledged in the same manner as deeds are acknowledged for record.

(2) Such notice shall be filed with the clerk of the circuit court of the county or counties where the land described therein is situated, together with a true copy thereof. The clerk shall enter, record and index said notice in the same manner that deeds are entered, recorded and indexed, as though the claimant were the grantee in the deed and the purported owner were the grantor in a deed, and the clerk shall charge the same fees for recording thereof as are charged for recording deeds. In those counties where the circuit court clerk maintains a

tract index, such notice shall also be indexed therein.

(3) The clerk of the circuit court shall, upon such filing, mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For mailing each such copy, the claimant shall pay the sum of 50 cents, in addition to the recording charges. If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

I hereby certify that I did on this _____, mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated: (Clerk of the circuit court) of _____County, Florida, By (Deputy Clerk).

(4) Failure of any purported owner to receive the mailed notice shall not affect the validity of the notice or vitiate the effect of the filing of such notice.

712.07 LIMITATIONS OF ACTIONS AND RECORDING ACTS — Nothing contained in

this law shall be construed to extend the period for the bringing of an action or for the doing of any other act required under any statute of limitations or to affect the operation of any statute governing the effect of the recording or the failure to record any instrument affecting land. This law shall not vitiate any curative statute.

712.08 FILING FALSE CLAIM — No person shall use the privilege of filing notices hereunder for the purpose of asserting false or fictitious claims to land; and in any action relating thereto if the court shall find that any person has filed a false or fictitious claim, the court may award to the prevailing party all costs incurred by him in such action, including a reasonable attorney's fee, and in addition thereto may award to the prevailing party all damages that he may have sustained as a result of the filing of such notice of claim.

712.09 EXTENSION OF 30-YEAR PERIOD — If the 30-year period for filing notice under §712.05 shall have expired prior to July 1, 1965, such period shall be extended to July 1, 1965.

712.10 LAW TO BE LIBERALLY CONSTRUED — This law shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record title as described in §712.02 subject only to such limitations as appear in §712.03.

RAISING THE FEDERAL QUESTIONS

The City asserted in its amended complaint that Florida's MRTA, if construed to divest the City of its property, would violate the specific provisions of the Federal Constitution here invoked. The trial court dismissed the complaint with prejudice.

The City appealed to the Court of Appeal, Third District of Florida, again invoking the constitutional provisions in its assignments of error. The Court of Appeal affirmed, but certified the constitutionality of Florida's MRTA to the Florida Supreme Court as a "question of great public interest."

The City argued each of the specific provisions of the Federal Constitution here invoked to the Florida Supreme Court. Indeed, it urged the very cases cited on this appeal. The Florida Supreme Court rejected the City's arguments and expressly held Florida's MRTA constitutional.

STATEMENT OF THE CASE

In 1919, the State conveyed to the City certain bay bottom lands. Beginning in the 1920's, Florida East Coast Hotel Corporation (FEC), which owned fourteen acres of adjacent upland property, pirated 10.69 acres of the City's submerged lands by unlawful bulkheading and filling.

In 1944, FEC conveyed its fourteen upland acres *and* claimed to convey 10.69 acres of the City's land to St. Joe Paper Company.[3] All of the appellees claim under this 1944 deed. As the Florida Supreme Court held, this 1944 deed was "wild" — i.e., the City, and not St. Joe (and its successors), owned the 10.69 acres. *City of Miami v. St. Joe Paper Co.*, 364 So.2d 439 (Fla. 1978). The 1944 deed was therefore *void.*[4]

Although the City argued that Florida's MRTA violated the Contract Clause, the Taking Clause, and the Due Process Clause, the Florida Supreme Court declined to apply either an impairment or a taking analysis. And its putative due process analysis does not even approach the analysis enunciated by this Court. The court held that merely because title legislation "concerns the public welfare," Florida's MRTA does not violate the United States Constitution. It ruled as follows:

[3]Although not directly in suit, additional property (in excess of 100 acres of illegally filled sovereignty land) may be affected by this decision.

[4]See n. 1, *supra.*

> Although it is a most important limitation on state action, due process has never been an absolute prohibition against state legislation adversely affecting property rights. It has been held over and over again that general limitations on state action do not extinguish the state's police power to enact legislation "reasonably necessary to secure the health, safety, good order, comfort or general welfare of the community."
>
> In determining whether state action violates due process principles, a court must choose between protecting the individual's guaranteed rights on the one hand and the welfare of the general public on the other. This method of determining whether a state meets the requirements of due process is called the "balancing of interest" test. See Simes & Taylor, The Improvement of Conveyancing by Legislation, 255-56 (1960).
>
> The Marketable Record Titles Act, designed to simplify conveyances of real property, stabilize titles and give certainty to land ownership, is certainly legislation concerning the welfare of the public.

364 So.2d at 444.

As construed, Florida's MRTA divests a landowner in favor of anyone having a void deed of record for more than thirty years with no subsequently recorded conflicting interest.

THE QUESTIONS ARE SUBSTANTIAL

Florida's MRTA has obliterated the State's conveyance to the City and has extinguished the City's property ownership, without compensation and without notice. This divestiture does not even purport to arise from any emergency; it is neither reasonable nor necessary; it is not justified by any state interest. Substantial questions are therefore raised under the Contract Clause, the Taking Clause, and the Due Process Clause.

The Florida Supreme Court purported to "balance" what it called "the individual's guaranteed rights on the one hand and the welfare of the general public on the other". *City of Miami,* 364 So.2d at 444. The court made no finding (and could not have) that the legislation is justified by an economic emergency, or even that it is reasonable or necessary to serve the state interest. Instead, the court held that, title legislation being within the scope of the police power, the "individual's guaranteed rights" are outweighed by the state interests.

The decision directly contradicts not only this Court's holdings in *United States Trust Co. v. New Jersey,* 431 U.S. 1, 97 S.Ct. 1505 (1977); and *Allied Structural Steel Co. v. Spannaus,* 98 S.Ct. 2716 (1978), but also the alternative due process analysis urged by the dissenting justices in each case. Both decisions were cited by the City; both were completely ignored by the Florida Supreme Court.

The very approach the Florida court said it was taking was rejected by this Court in *United States Trust Co. v. New Jersey,* 97 S.Ct. 1505 (1977):

> Appellees contend that these goals are so important that any harm to bondholders from repeal of the 1962 covenant is greatly outweighed by the public benefit. We do not accept this invitation to engage in a utilitarian comparison of public benefit and private loss. Contrary to Mr. Justice Black's fear expressed on sole dissent in *El Paso v. Simmons*, . . . *the Court has not "balanced away" the limitation on state action imposed by the Contract Clause.*

97 S.Ct. at 1521 (emphasis added).

Moreover, the Florida Supreme Court's actual process of decision contradicts even the position taken by the dissenting justices in *Spannaus* and *United States Trust*. Mr. Justice Brennan acknowledged in both decisions that the Contract Clause prohibits state laws that "[dilute], with utter indifference to the legitimate interests of the beneficiary of a contract duty, the existing contract obligation." For the dissenting justices, he recognized that due process analysis protects only legislation which is "reasonably *necessary* to promote the general welfare." *Spannaus*, 98 S.Ct. at 2731 (emphasis added).

Put another way, the Florida court has approved a divestiture by a method of decision rejected by every Justice of this Court in *United States Trust* (1977) or *Spannaus* (1978).

Operation of Florida's Marketable Record Titles Act

The Florida courts held that the total divestiture of the City's property is "justified" by the state's interest in simplifying the work of title searchers.

The City does not question the state's interest in regulating title conveyancing. *Cf. American Land Co. v. Zeiss*, 219 U.S. 47 (1911) (upholding emergency title legislation enacted after a flood destroyed public records in San Francisco). However, Florida's MRTA represents a drastic, and impermissible, departure from the very essentials of property law.

Florida's MRTA is based on a model act proposed in 1960 by Professors Simes and Taylor.[5] Similar statutes have been passed in at least twenty other states.[6] The primary effect of such legislation is to allow a purchaser to disregard stale encumbrances on a valid record chain of title. *See* L. Simes, *A Handbook for More Efficient Conveyancing*, 33-36 (1961).

Realizing this valid but limited effect, *other state courts have said that such legislation cannot constitutionally resolve conflicts between two separate chains of title.* And no other state has countenanced the drastic redistribution of property approved by Florida.

In *Wichelman v. Messner*, 83 N.W. 2d 800 (Minn. 1957), the court held Minnesota's marketable title act constitutional only by construing the statue *not* to honor a wild deed:

[5]L. Simes and C. Taylor, Improvement of Conveyancing by Legislation (1960).

[6]The States of Connecticut, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New York, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, and Wisconsin have enacted legislation similar to Florida's. Boyer & Shapo, *Florida's Marketable Title Act*, 28 U. MIAMI L. REV. 103, 103-104 n. 3 (1963); Barnett, *Marketable Title Acts — Panacea or Pandemonium?* 53 CORNELL L. REV. 45, 47 n. 6 (1967); Fratcher, *A Modest Proposal for Trimming the Claws of Legal Future Interests*, 1972 DUKE L.J. 517, 529 n. 53.

> [Plaintiff] asserts that the grantee in a stray or interloping deed might become 'the absolute owner' of property. We do not think the statute lends itself to an interpretation to the effect that title may be founded on a stray, accidental, or interloping conveyance. Its object is to provide, for the recorded fee simple ownership, an *exemption* from the burdens of old conditions and restrictions which at each transfer of the property transfer with its marketability. *The statute does not operate to provide the foundation for a new title.*

83 N.W.2d at 819 (extra emphasis added).

In *Exchange National Bank v. Lawndale National Bank*, 243 N.E.2d 193 (Ill. 1968), the Illinois Supreme Court agreed:

> A consideration of our Act, including the section declaring the legislative purpose of 'simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title' leads us to conclude that the Act contemplated the existence of only one record chain of title holder.
>
> Were we to hold otherwise it could result in a 'wild deed' being enabled to serve as the foundation of a new record chain of title, so that it, as the more recent 40-year chain of title, would be entitled to the benefit of the Act. *This could result in unwelcome holdings and possible constitutional complications, for it would be then possible for the grantee of a complete and even*

> *fraudulent stranger to title to divest the title of a record owner . . . . Too, the legislative purpose under the Act of 'simplifying and facilitating land title transactions' would hardly be furthered by a contary holding.*

243 N.E.2d at 195-196 (citations omitted, emphasis supplied).

Indeed, prior to this case, there was no reason to believe that Florida's MRTA could validate a wild deed. It had always been the law in Florida that a wild deed is void, *Wright v. Blocker*, 198 So. 88 (Fla. 1940), and cannot be validated by a subsequent legislative enactment, *Smith Bros. v. Williams*, 131 So. 335 (Fla. 1930). And this was settled law when Florida's MRTA was enacted in 1963.

Nevertheless, the Florida Supreme Court has directly held that Florida's MRTA validates a wild deed.[7] The destructive precedential impact of its decision bodes ill for legislation adopted in many states and may well be used to overrule the salutary and heretofore landmark decisions rendered by the Supreme Courts of Illinois and Minnesota.

Contract Clause

The Florida Supreme Court erroneously treated the Federal Contract Clause as a dead letter. This Court's recent decisions make clear it is not. As this Court stated in *Spannaus*, 98 S.Ct. at 2723 (emphasis added):

[7] "We are asked to hold, without equivocation, that a wild deed may constitute a root of title. We so hold." *City of Miami*, 364 So.2d at 439.

> [T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. *The severity of the impairment measures the height of the hurdle the state legislation must clear.* Minimal alteration of contractual obligations may end the inquiry at its first stage. *Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.*

Florida's MRTA, as applied to divest a record feeholder in favor of a wild deed, clearly impairs a contract.[8] In fact, it is more accurate to say that Florida's MRTA *destroys* contracts.[9] And here, the contract impaired is the State's own,[10] which requires even more stringent examination. *United States Trust,* 431 U.S. 1.

[8]A statutory grant deed is protected by the Contract Clause. *United States Trust,* 97 S.Ct. at 1515, n. 14; Fletcher v. Peck, 10 U.S. 87 (1810); Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819).

[9]The Florida Supreme Court's response that the City could have avoided divestiture by re-recording its interest begs the question. The statute itself does not require a feeholder to re-record his interest. The feeholder is not put on notice of a maturing wild deed and therefore has no reason to re-record.

[10]The City's ownership was by way of a direct grant from the State. However, any "dispute" between competing chains of title, one emanating from the sovereign, and the other emanating from a wild deed, presents the question of impairing the initial grant from the State.

This Court's decisions plainly held that where, as here, no economic emergency exists, total destruction of a contractual right can never be upheld.[11]

Florida's legislature made no determination in Florida's MRTA of the nature and scope of the state interest being protected. The legitimacy of the state's interest in title legislation may be conceded. Cumbersome title searches undoubtedly make life more difficult for real estate developers, lawyers, and title abstractors, and could, at least conceivably, result in somewhat greater risks for title insurance companies.

But the state interest clearly does not even approach the category of economic emergency. The state's interest in simplifying title conveyancing does not justify the arbitrary destruction of the state's contractual conveyance in favor of a person with no valid claim or a grantee whose title examination necessarily demonstrates it is receiving a wild deed.

Moreover, even had a compelling state interest provided possible justification for total contract destruction (which is clearly not the case), Florida's MRTA nevertheless must fail. It is plainly *not* the least onerous means of achieving title security. For however legitimate a particular state interest may be, a contrac-

[11]*See, e.g., Spannaus,* 98 S.Ct. 2716; Home Building & Loan Assoc. v. Blaisdell, 290 U.S. 398 (1934); W. B. Worthen Co. v. Kavanaugh, 295 U.S. 56, 55 S.Ct. 555, 79 L.Ed. 1298 (1935). In *Kavanaugh* the Court struck an Arkansas statute that diluted the rights and remedies of mortgage bondholders. The Court deemed the statute an "unnecessary destruction of *nearly all* the incidents that give attractiveness and value to collateral security" (emphasis added).

tual impairment can be upheld only when it is "both reasonable *and* necessary" to serve those purposes. *United States Trust,* 47 S.Ct. at 1521 (emphasis added).

Other states have recognized that construction of marketable title legislation to validate wild deeds is *not* necessary to the purpose of such acts. Such validation of wild deeds does not further a state's interest in simplifying title conveyancing, and therefore (being unnecessary) raises substantial constitutional problems. *Wichelman v. Messner,* 83 N.W.2d at 819; *Exchange National Bank of Lawndale National Bank,* 243 N.E.2d at 195-196.

Florida's MRTA is plainly neither reasonable nor necessary. The state's interest in regulating title conveyancing, which may be legitimately exercised in recording and curative statutes, cannot and does not justify divestiture of a record feeholder in favor of a void deed.

Recording statutes can be valid because they resolve disputes in favor of purchasers who have *relied on the public record.* Such statutes allow a true owner to pass good title to a bona fide purchaser, and allow a grantee by recording (which constitutes notice) to prevent subsequent purchasers from taking bona fide. This Court enunciated such a rationale to uphold the constitutionality of a recording statute in *Vance v. Vance,* 108 U.S. 514 (1883):

> The strong current of modern legislation and judicial opinion is against the enforcement of secret liens on property. And, in regard to real

property, every state in the Union has enacted statutes holding them void against subsequent creditors and purchasers, unless they have actual notice of their existence, or such constructive notice as arises from registration.

The constitution of Louisiana introduced this principle, and did it with due regard to existing contracts. It did not change, defeat, or impair the obligation of the tutor to perform that contract. It did not take away or destroy the security which existed by way of lien on the tutor's property, nor as between the tutor and the ward did it make any change whatever. But it said to the latter:

> You have a secret lien, hidden from persons who are dealing every day with the tutor on the faith of this property, and in ignorance of your rights. We provide you a way of making those rights known by a public registration of them which all persons may examine, and of which all must take notice at their peril. We make it the duty of officers having charge of the offices where the evidence of your claim exists to make this registration. We make it your duty also to have it done. We give you a reasonable time after this constitution is passed and after the enabling statute is passed to have this registration made. If it is not done within that time your debt remains a valid debt, your mortgage remains a valid mortgage, but it binds no one who acquires rights after that in ignorance of your

> mortgage, because you have not given the notice which the law required you to give.

See also Jackson ex. dem. Hart v. Lamphire, 28 U.S. 280 (1830). *Compare American Land Co. v. Zeiss,* 219 U.S. 47.

Since, unlike Florida's MRTA, it confirmed rather than impaired a contract, this Court upheld the constitutionality of a curative statute in *Randall v. Kreiger,* 90 U.S. 124 (1875). The appellant challenged a deed executed under a power of attorney, which was not authorized under Minnesota law. The state court held the defect cured by Minnesota's curative statute. The court explained that the statute was not an unconstitutional impairment of contract, because the statute *did not impair, but confirmed* a legitimate contract.

> The power of a legislature, under the circumstances of this case, to pass laws giving validity to past deeds which were before ineffectual is well settled. . . . To the objection that such laws violate vested rights of property it has been forceably answered that *there can be no vested right to do wrong.* Claims contrary to justice and equity cannot be regarded as of that character. Consent to remedy the wrong is to be presumed. *The only right taken away is, the right dishonestly to repudiate an honest contract or conveyance to the injury of the other party.* Even where no remedy could be had in the courts the vested right is usually unattended with the slightest equity. . . . *The curative act of 1857 has a strong natural equity at its root. It did for her what she attempted to*

> *do, intended to do, and doubtless believed she had done, and for doing which her husband was fully paid.*

90 U.S. at 126 (emphasis added).

The ostensible purpose of marketable record titles acts is to shorten title searches: to allow a grantee certainty of title once he finds a "root of title" at least thirty years old with no subsequent conflicting claims. To the extent that such an act allows a grantee to ignore "the burdens of old conditions and restrictions which at each transfer of the property transfer with its marketability", *Wichelman,* 83 N.W.2d at 819, the statute may be deemed a reasonable protection of the state's interests in title certainty.

However, Florida's MRTA does not merely allow a grantee to ignore "old conditions and restrictions" on his title, it allows a putative grantee to *ignore* the fact, ascertainable from the public record, that his "chain of title" does not exist. And, it penalizes not the holder of a mere old condition or restriction,[12] it penalizes a record feeholder for failing to respond to a wild deed of which he had no notice.

[12]Conditions and restrictions are subject to being extinguished under the MRTA *only* after they disappear from the record chain of title. Florida Statutes § 712.03 (1) excepts "estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title." The holder of such an interest, unlike a feeholder facing divestiture in favor of a wild deed, has record notice that his interest has been deleted.

Such a result does not inject reason or equity into the law of conveyancing — it fixes title by arbitrarily cutting off and *ignoring the public record* of transactions beyond the thirty year period.

If Florida's MRTA did not apply to validate a wild deed, it would still achieve the State's legitimate interest.[13] A grantee could rely on the existence of a record chain of title, which is traceable to the sovereign and unencumbered by recent restrictions or conditions.[14]

> [A] State is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well.

United States Trust, 97 S.Ct. at 1522.

Florida's MRTA is neither reasonable nor necessary to serve the admittedly legitimate state interest in simplifying title searches. It imposes a complete destruction of a contractual conveyance in favor of one with no valid claim. The Florida Supreme Court's asserted "balancing" of this destruction against the state's interest in simplifying title conveyancing is directly contrary to this Court's explicit holdings in 1977 and 1978.

[13]In fact, inapplicability of the MRTA to wild deeds would make the title search simpler. If a title search shows a thirty-year gap in a record chain, the nonexistence of an intervening wild deed will have to be proven, requiring a search outside of the grantor-grantee index. See *Lawndale,* 243 N.E.2d 193.

[14]Florida's MRTA already requires a title searcher to locate the grant from the sovereign, to determine if any restrictions excepted by § 712.04 exist.

Taking

Recording and curative statutes seek fairly to resolve disputes between competing claimants. Florida's MRTA, on the other hand, seeks arbitrarily to "fix" title, purportedly to serve the state's interest in simplifying title transactions. This Court has recognized that state regulation of property interests, however legitimate the public interest being served, may constitute a "taking" of property for a public use within the meaning of the Fifth Amendment, entitling the deprived property owner to compensation. *Cf. Penn Central Transportation Co. v. City of New York,* 98 S.Ct. 2646 (1978), and cases discussed therein.

As the Supreme Court of Florida has recognized, the City was vested with full fee simple ownership of this land. *T.I.I.F. v. Claughton,* 86 So.2d 775 (Fla. 1956). The State has now forced a transfer of the City's property to a third person with no valid claim purportedly because the State wants to simplify title searches. This Court has made clear that the prohibition of the Fifth Amendment is not limited to cases where the State *obtains* private property, but extends as well to cases where the State destroys or forces a transfer of property interests. *Louisville Joint Stock Land Bank v. Radford,* 295 U.S. 555 (1935). The degree of deprivation (normally an issue in "taking" cases) is therefore not an issue here.

If it is indeed in the State's legitimate interest to shorten title searches, simplify conveyancing, and give certainty to title, achieving that interest by arbitrarily divesting legislative feeholders (to benefit private interests knowingly accepting defective title) imposes a

"public cost" on a few persons. Such an imposition is prohibited by the Fifth Amendment.

> The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

Armstrong v. United States, 364 U.S. 40, 49 (1960). As the Court stated in *United States Trust,* 97 S.Ct. at 1516, n. 16, contract rights may be taken for a public purpose, *but compensation must be paid.* Therefore, even if Florida's MRTA serves a public purpose, it takes property without compensation, and violates the Fifth Amendment.

Due Process

Although the City argued below that Florida's MRTA violates the Contract Clause, the Taking Clause, and the Due Process Clause of the Federal Constitution, the Florida Supreme Court attempted to treat only the due process issue. Its idea of a "balancing of interest" test espoused by the dissenting justices in *United States Trust* and *Spannaus,* however, consisted *only* of a determination whether the statute "concerned" public welfare. Since it did, the Florida court held that it comported with due process.

The Florida Supreme Court took the position that the City could have avoided divestiture by re-recording its ownership, comparing Florida's MRTA to a statute

of limitation. But the City did not have a mere "claim" — it had a vested estate in fee simple, recognized by the Florida Supreme Court. *T.I.I.F. v. Claughton,* 86 So.2d 775. The statute of limitation analogy is therefore inapposite. *Vested rights* cannot be taken away without notice and compensation.

The City had notice of Florida's MRTA. *See Anderson National Bank v. Luckett,* 321 U.S. 233 (1954). But the statute did not notify the City that it would have to re-record its ownership to protect itself from *a wild deed of which it had no notice.*

Due process requires notice "such as one desirous of actually informing . . . might reasonably adopt to accomplish it." *Mullane v. Central Hanover Bank & Trust Company,* 339 U.S. 306, 315 (1950). The language of the statute must therefore properly apprise one of its requirements.

> Due process requires that all "be informed as to what the State commands or forbids," and that "men of common intelligence not be forced to guess at the meaning of the criminal law."

Smith v. Goguen, 415 U.S. 566, 574 (1974) (citations omitted). Due process should require no less than this for a total deprivation of vested property.

Prior to the Florida Supreme Court's decision in this case, it had always been the law in Florida that a

wild deed is void, and conveys no notice of anything.[15] Florida's MRTA did not purport to change this.

The City cannot, consistent with due process, be charged with notice that it had to re-record its ownership to avoid divestiture in favor of a wild deed. The City was entitled to assume that the MRTA would not divest it in favor of an interest of which it had no notice.

The City had notice of Florida's MRTA, but did not have notice of any legitimate challenge to its title, and did not have notice that Florida's MRTA could validate a wild deed. Notice of the statute itself was not enough to put the City on notice of a wild deed; under Florida law, a wild deed does not confer notice of anything.

Moreover, Florida's MRTA is not "reasonably necessary to promote the general welfare." *Spannaus*, 98 S.Ct. at 2731 (Brennan, J., dissenting). It divests a record feeholder in favor of one with no valid claim.

[15]See n. 1, *supra*. *Cf. United States Trust*, 97 S.Ct. at 1515 n. 14. This law was part of the City's statutory grant, and part of Florida's MRTA. See also City of New York v. New York, N.H. & H.R. Co., 344 U.S. 293 (1953), which follows *Mullane*. The Court held that the City's notice of the pendency of bankruptcy proceedings did not confer notice of deadlines contained in court orders:

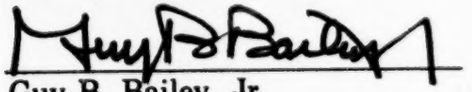
> Nor can the bar order against New York be sustained because of the city's knowledge that reorganization of the railroad was taking place in the court. The argument is that such knowledge puts a duty on creditors to inquire for themselves about possible court orders limiting the time for filing claims. But even creditors who have knowledge of a reorganization have a right to assume that the statutory "reasonable notice" will be given them before their claims are forever barred. When the judge ordered notice by mail to be given the appearing creditors, New York City acted reasonably in waiting to receive the same treatment.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

GUY B. BAILEY, JR.
Suite 1820,
One Biscayne Tower
Two South Biscayne Boulevard
Miami, Florida 33131
(305) 374-5505



Guy B. Bailey, Jr.

OF COUNSEL:

JESSE C. JONES
Suite 1820, One Biscayne Tower
Two South Biscayne Boulevard
Miami, Florida 33131

March 14, 1979

Appendix

Opinion of Court of Appeal of Florida, Third District 1

Order by Court of Appeal of Florida, Third District 10

Opinion of Supreme Court of Florida 12

Order of Supreme Court of Florida denying rehearing 34

Notice of Appeal to the Supreme Court of the United States 35

Certificate of Service..... 37

APPENDIX

IN THE DISTRICT COURT
OF APPEAL OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1977

CITY OF MIAMI,
a Florida municipal corporation,
Appellant,

vs.

ST. JOE PAPER COMPANY, etc., et al.,
Appellees.

CASE NOS. 76-423, 76-686

Opinion filed May 3, 1977.

Appeals from the Circuit Court for Dade County, Harvie S. DuVal and Rhea P. Grossman, Judges.

Guy B. Bailey, Jr., for appellant.

Shutts & Bowen and William P. Simmons, Jr.; Sibley, Giblin, Levenson & Glaser; Steel, Hector & Davis: Russo, Van Doren & Allen, for appellees.

Before PEARSON, HAVERFIELD and NATHAN, JJ.

PEARSON, Judge.

The City of Miami appeals a final judgment dismissing its amended complaint as to defendants, St. Joe Paper Company, Hugh E. Matheson, Jr., and Southeast Properties, Inc. The second appeal is from a summary final judgment for defendant Sally S. Dommerich. The City states that the issues are essentially the same on both appeals, which have been consolidated for all appellate purposes. The City's complaint sought "to quiet and confirm title, for ejectment" upon "all or substantial portions" of several lots and tracts, being filled land on the north side of the Miami River at or near the river's entrance into Biscayne Bay.[1]

The controlling question appears to be whether the City's claim is barred by the Marketable Record Title Act, Chapter 712, Florida Statutes (1975). This question must be determined from the allegations of the complaint if it is to be determined, as it was, at the pleading stage. See Stern v. First National Bank of South Miami, 275 So.2d 58 (Fla. 3d DCA 1973). We hold that the amended complaint was properly dismissed on this ground.

The allegations of the amended complaint, rearranged chronologically for the purpose of clarity in determining the applicability of the Marketable Record Title Act, are:

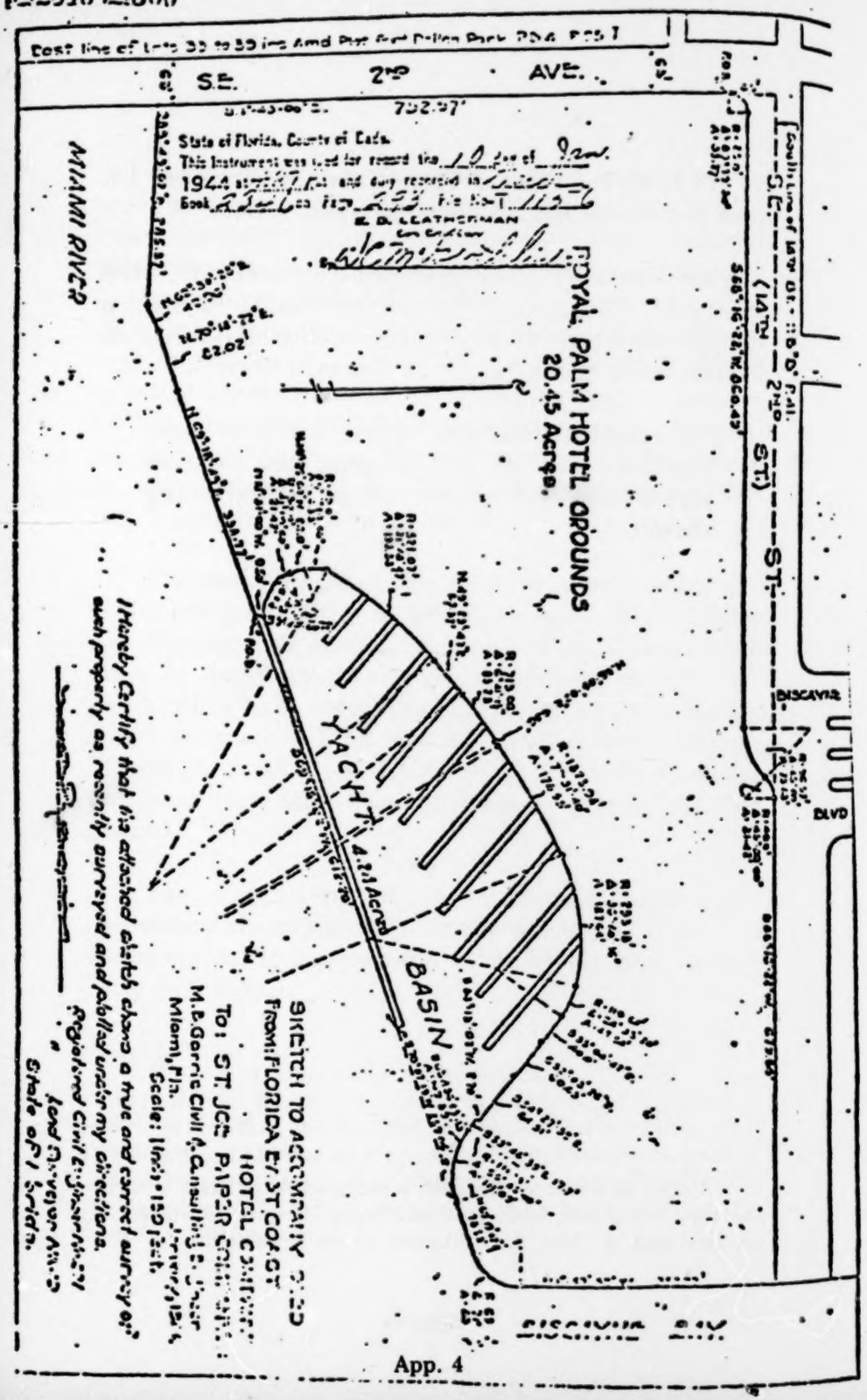
[1] "20. All or substantial portions of Lots 1 through 10, inclusive, of Block 3; Lots 7 and 8 of Block 5; Lots A and B of Block 1; and all of Tracts C and D of the said plat of DuPont Plaza, were irrevocably conveyed by the State of Florida to Miami in its grant of June 2, 1913, and Miami owns of right title and interest thereto in fee simple absolute, subject only to the requirement that they be used for municipal purposes only."

1. In 1845, the State of Florida acquired from the United States the lands under navigable waters.

2. By Warranty Deed recorded December 15, 1898, Henry M. Flagler conveyed to the Florida East Coast Hotel Corporation portions of the mainland north of the Miami River and adjacent to Biscayne Bay:[2]

> "containing fourteen acres, more or less, together with all and singular the riparian rights and submerged lands appertaining thereto."

[2] A map attached to this deed is included as an exhibit to the amended complaint. It shows that Flagler intended to convey all the land east of "Mrs. J. D. Tuttle's Home Reservation."


S.E. 2ND AVE.
752.97'
State of Florida, County of Dade.
MIAMI RIVER
ROYAL PALM HOTEL GROUNDS
20.45 Acres.
YACHT
4.81 Acres
BASIN
SKETCH TO ACCOMPANY DEED
FROM FLORIDA EAST COAST
HOTEL COMPANY
TO ST. JOE PAPER COMPANY
M.P. Gerrie Civil & Consulting Engineer
Miami, Fla.
Scale: 1inch=150 feet.
I Hereby Certify that the attached sketch shows a true and correct survey of such property as recently surveyed and plotted under my direction.
Registered Civil Engineer and Surveyor
State of Florida.
BISCAYNE BAY
BISCAYNE BLVD

App. 4

3. By a special act of the Florida Legislature on June 2, 1919, the State of Florida granted to the City of Miami "for municipal purposes only, all its rights, title and interest . . . to all submerged lands, including waterfront and riparian rights" to an area which included the mouth of the Miami River. The statutory grant included the following section:

* * *

> "Sec. 2. That this grant shall not affect any other grant heretofore made to any individual or corporation and nothing herein shall be construed as depriving any riparian owner or proprietor of any rights under the laws of this State."

4. Beginning in 1920, the Florida East Coast Hotel Corporation bulkheaded and filled a portion of the property in question but left a yacht basin.

5. On January 10, 1944, the St. Joe Paper Company (one of the defendants) recorded a warranty deed from the Florida East Coast Hotel Corporation which conveyed to it all of the lands with which we are here concerned including the yacht basin which was then in existence. Recorded with the deed was a map which is reproduced for reference. Some time after 1944, St. Joe filled and bulkheaded the yacht basin.

6. All the defendants other than St. Joe claim under recorded deeds from St. Joe Paper Company subsequent to the 1944 deed to St. Joe Paper Company.

7. On February 3, 1949, St. Joe recorded a plat (attached to the complaint) of the lands involved. This plat was approved by the City of Miami prior to recordation.

The City raises eight points on appeal. The first point urges that the City should have again been given a right to amend its complaint. This point does not present error because the City had once amended its complaint and no new fact in relation to the points on appeal was alleged. In addition, the record does not show a tender or a request to amend.

The second point urges that the area covered by the yacht basin is not protected by the Marketable Record Title Act, even if the act should be held applicable to the remaining area, because the yacht basin was not filled until 1949. This point does not present error because there is nothing within the act which refers to the physical characteristics of the land. If the legislature had intended to exempt unfilled land, it would have been necessary for the legislature to have provided so. See Sawyer v. Modrall, 286 So.2d 610 (Fla. 4th DCA 1973); cf. Odom v. Deltona Corporation, 341 So.2d 977 (Fla. 1976).

The third point urges that the trial judge improperly took notice of facts outside the record and applied these facts to find estoppel or waiver of the City's rights. We do not consider this point because our review of the judgment is based entirely upon the record as it has been presented.

The fourth point urges that the "Butler Bill" (the Riparian Rights Act of 1921, Section 271.01, Florida Statutes, which was repealed in 1957) cannot provide an

alternative ground for the dismissal of the amended complaint. We do not consider this point in view of our holding herein.

The fifth point urges that the Marketable Record Title Act is inapplicable because the 1944 conveyance was a wild or void deed. This point is not sustainable in view of the holding of the Supreme Court of Florida in Marshall v. Hollywood, Inc., 236 So.2d 114 (Fla. 1970). See also Wilson v. Kelley, 226 So.2d 123 (Fla.2d DCA 1969); and Whaley v. Wotring, 225 So.2d 177 (Fla. 1st DCA 1969).

The sixth point urges that the City is exempt from the provisions of the Marketable Record Title Act either as a trustee of the public or as an agency of the State. This position is not sustainable in view of the holding of the Supreme Court of Florida in Odom v. Deltona Corporation, 341 So.2d 977 (Fla. 1976), where the court held:

* * *

> "It seems logical to this Court that, when the Legislature enacts a Marketable Title Act, as found at Chapter 712, Florida Statutes, clearing any title having been in existence thirty years or more, the state should conform to the same standard as it requires of its citizens; the claims of the Trustees to beds underlying navigable waters previously conveyed are extinguished by the Act. Stability of titles expressly requires that, when lawfully executed land conveyances are made by public officials to private citizens without reservation of public

rights in and to the waters located thereon, a change of personnel among elected state officials should not authorize the government to take from the grantee the rights which have been conveyed previously without appropriate justification and compensation. If the state has conveyed property rights which it now needs, these can be reacquired through eminent domain; otherwise, legal estoppel is applicable and bars the Trustees' claim of ownership, subject to rights specifically reserved in such conveyances."

The seventh point urges that the City is exempt from the provisions of the Marketable Record Title Act by the reason of exceptions embodied in the act. The argument is two pronged: (1) the Act intended to preserve governmental use in land; (2) the City's legislative grant was "for municipal purposes only" and, therefore, the grant was a reservation by the State of the public's rights in the filled property. Neither of these arguments presents error in view of the holdings of the Supreme Court in Odom v. Deltona Corporation, 341 So.2d 977 (Fla. 1976), which held the Act applicable to the State's interest in lands.

The eighth point is as follows:

"Where, as construed and applied, Florida Statute Chapter 712 destroys a constitutionally protected interest, impairs obligations of contracts, permits a void deed to form a root of title, fails to give adequate notice and otherwise deprives a land owner of due process of law, the trial judge erred in holding the act constitutional."

The trial court did not rule upon the constitutionality of the act, but did apply the act as though it were constitutional. We consider the issue to be fundamental and shall, therefore, treat the question as though raised initially on this appeal. See Palm Beach County v. Green, 179 So.2d 356 (Fla. 1965). In order to expedite the ruling on this question, we will certify this decision to the Supreme Court as one passing upon a question of great public interest.

Although the Supreme Court of Florida has not specifically held the Marketable Record Title Act constitutional, it has implicitly done so in Marshall v. Hollywood, Inc., 236 So.2d 114 (Fla. 1970); and Odom v. Deltona Corporation, 341 So.2d 977 (Fla. 1976).

The Marketable Record Title Act extinguishes claims of thirty years or more which conflict with a record chain of title which is at least that old. The act was passed in 1963 and provided the City with ten and one-half years within which it could assert its claim. In view of the length of time provided and the easy way in which the City could have protected its claim, see Section 712.05, Florida Statutes (1975), we find no reason to hold that the act was unconstitutionally applied to the City. Cf. Campbell v. Horne, 147 Fla. 523, 3 So.2d 125 (1941); Mahood v. Bessemer Properties, Inc., 154 Fla. 710, 18 So.2d 775 (1944); Buck v. Triplett, 159 Fla. 772, 32 So.2d 753 (1947); H.K.L. Realty Corporation v. Kirtley, 74 So.2d 876 (Fla. 1954); and in Re Brown's Estate, 117 So.2d 478 (Fla. 1960).

Accordingly, the judgments are affirmed.

IN THE DISTRICT COURT
OF APPEAL OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1977
TUESDAY, MAY 3, 1977

CITY OF MIAMI,
a Florida municipal corporation,
Appellant,

vs.

ST. JOE PAPER COMPANY, etc., et al.,
Appellees.

CASE NOS. 76-423
76-686

To the Honorable, The Supreme Court of Florida:

We hereby certify to the Supreme Court of Florida, under and as provided for in Article V, Section 4 (2) of the Constitution of Florida, as a means of bringing this cause within the jurisdiction of the Supreme Court in event certiorari is applied for, that the decision of this court in this case "passes upon a question * * * of great public interest" whether the Marketable Record Title Act (Chapter 712, Florida Statutes) is constitutionally applied when it is held to prevent the claim of a City under a statutory land grant from the State of Florida granting the City all of the State's rights to submerged land including waterfront and riparian rights.

Respectfully submitted,

s/ TILLMAN PEARSON
Judge

s/ ROBERT M. HAVERFIELD
Judge

s/ RAYMOND G. NATHAN
Judge

cc: Guy B. Bailey, Jr.
Shutts & Bowen
Sibley, Giblin, etc.
Steel, Hector, etc.
Russo, Van Doren & Allen

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1978

CASE NO. 51,775

DCA CASE NOS. 76-423
76-686

CITY OF MIAMI,
a Florida corporation,

Petitioner,

v.

ST. JOE PAPER COMPANY,
a Florida corporation;
SOUTHEAST PROPERTIES, INC.,
a Florida corporation;
HUGH E. MATHESON, JR., individually;
and SALLY S. DOMMERICH,
formerly SALLY S. MATHESON, individually,

Respondents.

Opinion filed October 5, 1978

Writ of Certiorari to the District Court of Appeal, Third District

Guy B. Bailey, Jr. and Jesse C. Jones of Bailey and Dawes, Miami, Florida, for Petitioner

Wm. P. Simmons, Jr. of Shutts and Bowen, Miami; and Marion E. Sibley and Eric B. Meyers of Sibley, Giblin, Levenson and Glaser, Miami Beach, for St. Joe Paper Company; Joseph P. Klock, Jr. of Steel, Hector and

Davis, Miami, for Southeast Properties, Inc.; and Edmund P. Russo of Russo, Van Doren and Allen, Coral Gables, for Hugh E. Matheson, Jr., Respondents

Nancy G. Linnan, Assistant General Counsel; and J. Kendrick Tucker, Assistant Attorney General, Tallahassee, for Reubin O'D. Askew, as Governor of the State of Florida, and Robert L. Shevin, as Attorney General of the State of Florida, Amicus Curiae

Julian C. Clarkson, John R. Lawson, Jr., Hume F. Coleman and Chesterfield Smith of Holland and Knight, Tallahassee, for Amicus Curiae

J. Richard Harris of Scott, Burk, Royce, Harris and Loucks, Palm Beach, for The Florida Bar, Amicus Curiae

ADKINS, J.

This cause is here on petition for writ of certiorari supported by certificate of the District Court of Appeal, Third District, that its decision reported in 347 So.2d 622 is one which involves a question of great public interest. We have jurisdiction. See Florida Constitution, Article V., Section 3(b) (3).

Petitioner has attacked the constitutionality of Florida Statutes, Chapter 712, the Marketable Record Title Act. Also involved in this case is the question of whether an interloping or wild deed could constitute a root of title.

Petitioner, hereinafter referred to as the city, filed a complaint to quiet its title to a tract of land on the north

side of the Miami River at or near the river's entrance into Biscayne Bay. Upon motion, the amended complaint was dismissed on the ground that it appeared upon the face of the complaint that the city's claim was barred by the Marketable Record Title Act. The District Court of Appeal, in its opinion, recited the following history of the title, as described in the city's complaint:

> ". . . 1. In 1845, the State of Florida acquired from the United States the lands under navigable waters.
>
> "2. By Warranty Deed recorded December 15, 1898, Henry M. Flagler conveyed to the Florida East Coast Hotel Corporation portions of the mainland north of the Miami River and adjacent to Biscayne Bay:
>
> 'containing fourteen acres, more or less, together with all and singular the riparian rights and submerged lands appertaining thereto.'
>
> "3. By a special act of the Florida Legislature on June 2, 1919, the State of Florida granted to the City of Miami 'for municipal purposes only, all its rights, title and interest . . . to all submerged lands, including waterfront and riparian rights to an area which included the mouth of the Miami River. The statutory grant included the following section:
>
> * * *

> " 'Sec. 2. That this grant shall not affect any other grant heretofore made to any individual or corporation and nothing herein shall be construed as depriving any riparian owner or proprietor of any rights under the laws of this State.'
>
> "4. Beginning in 1920, the Florida East Coast Hotel Corporation bulkheaded and filled a portion of the property in question but left a yacht basin.
>
> "5. On January 10, 1944, the St. Joe Paper Company (one of the defendants) recorded a warranty deed from the Florida East Coast Hotel Corporation which conveyed to it all of the lands with which we are here concerned including the yacht basin which was then in existence. Some time after 1944, St. Joe filled and bulkheaded the yacht basin.
>
> "6. All of the defendants other than St. Joe claim under recorded deeds from St. Joe Paper Company subsequent to the 1944 deed to St. Joe Paper Company.
>
> "7. On February 3, 1949, St. Joe recorded a plat (attached to the complaint) of the lands involved. This plat was approved by the City of Miami prior to recordation." 347 So.2d at 623 (Fla. 1977).

The Marketable Record Title Act is a comprehensive plan for reform in conveyancing procedures. It is a curative act in that it may operate to correct certain

defects which have arisen in the execution of instruments in the chain of title. Curative statutes reach back on past events to correct errors or irregularities and to render valid and effective attempted acts which would be otherwise ineffective for the purpose the parties intended. They operate to complete a transaction which the parties intended to accomplish but carried out imperfectly.

The Marketable Record Title Act is also a statute of limitations in that it requires stale demands to be asserted within a reasonable time after a cause of action has accrued. It prescribes a period within which a right may be enforced.

The Marketable Record Title Act is also a recording act in that it provides for a simple and easy method by which the owner of an existing old interest may preserve it. If he fails to take the step of filing the notice as provided, he has only himself to blame if his interest is extinguished. The legislature did not intend to arbitrarily wipe out old claims and interests without affording a means of preserving them and giving a reasonable period of time within which to take the necessary steps to accomplish that purpose.

This court in *Mahood v. Bessemer Properties, Inc.*, 18 So.2d 775 (Fla. 1944), held that the legislature may legitimately use a recording statute as a means of getting rid of stale claims. Florida Statutes 695.20, enacted in 1941, voided contracts for the purchase of lands which were left by the collapse of the Florida Real Estate boom of the 1920's. Under the terms of the statute, persons who had contracted to purchase land prior to a certain date, but had not placed a deed

on record or obtained a decree and were not in possession, were declared to have no interest in the land unless they had given notice of their claims by recordation in one of several ways specified and within six months from the adoption of the statute.

Catsman, the Marketable Record Title Act and Uniform Title Standards, Volume 3, Florida Real Property Practice (1965) Section 6.2 describes the nature of the act as follows:

> "The chief purpose of the act is to extinguish stale claims and ancient defects against the title to real property, and, accordingly, limit the period of search. The act is different from a statute of limitations. In a statute of limitations a claim of a vested, present interest is cut off because of the claimant's failure to sue. If suit is not filed, the claim is lost. By the Marketable Record Title Act, any claim or interest, vested or contingent, present or future, is cut off unless the claimant preserves his claim by filing a notice within a 30-year period. See §6.5. If a notice is not filed, the claim is lost. The act also goes beyond a curative act. Curative legislation only corrects certain minor or technical defects through the passage of time, whereas under the Marketable Record Title Act, most defects or clouds on title beyond the period of 30 years are removed and the purchaser is made secure in his transaction."

This court has acknowledged the constitutionality of the act in *Marshall v. Hollywood, Inc.*, 236 So.2d 114

(Fla. 1970), *Odom v. Deltona Corporation,* 341 So.2d 977 (Fla. 1976). We now specifically hold that the Marketable Record Title Act is constitutional.

Courts of other states have ruled that similar marketable title acts are constitutional. *See Wichelman v. Messner,* 83 NW2d 800 (Minn. 1957) (in depth discussion of the Act's constitutionality); *Tesdell v. Hanes,* 82 NW2d 119, 123 (Iowa 1957) ("We are satisfied the legislature had ample authority to make a limitation . . . subject to a condition that a reasonable time must elapse before it becomes effective."); *Lane v. Traveler's Insurance Company,* 299 NW 553, 555 (Iowa 1941) ("little doubt of the desirability of statutes giving greater effect and stability to record titles.") *See also* discussion in *Note, Constitutionality of Market Title Legislation,* 47 Iowa L.Rev. 413, 428-29 (1962).

Other decisions by this court upholding the constitutionality of similar legislative enactments make it clear that the Act can constitutionally be applied to bar the city's claim. In *Mahood v. Bessemer Properties, Inc., supra,* this court upheld the constitutionality of the application, to a purchaser under a 1925 contract, of a 1941 act which removed from titles to realty the clouds of unperformed contracts of record unless suit be brought within six months. In *In Re Estate of Brown,* 117 So.2d 478 (Fla. 1960), this court held constitutional the application, to a claim arising before its passage, of a 1953 statute which barred claims against an estate after three years. In *H. K. L. Realty Corporation v. Kirtley,* 74 So.2d 876 (Fla. 1954), this court upheld the constitutionality of the application of a twenty-year statute of limitations to mortgages on a given date after one year from such given date on the ground that a reasonable

time is provided for the enforcement of a cause of action before the restriction becomes effective. See *Buck v. Triplett,* 32 So.2d 753, 754-55 (Fla. 1947) where the court said:

> "We are committed to the rule that statutes of this nature [statute of limitation] are good where a reasonable time is allowed to prosecute an asserted right."

and *Campbell v. Horne,* 3 So.2d 125, 126 (Fla. 1941) where the court said:

> "The law is well settled by decisions of the Supreme Court of the United States and in other jurisdictions, that statutes of limitation affecting existing rights are not unconstitutional if a reasonable time is given for the enforcement of the right before the bar takes effect."

The city contends that the application of the Act to bar its claim violates the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Although it is a most important limitation on state action, due process has never been an absolute prohibition against state legislation adversely affecting property rights. It has been held over and over again that general limitations on state action do not extinguish the state's police power to enact legislation "reasonably necessary to secure the health, safety, good order, comfort or general welfare of the community." *See Atlantic Coast Line Railroad v. Goldsboro,* 232 U.S. 548, 558 (1914).

In determining whether state action violates due process principles, a court must choose between protecting the individual's guaranteed rights on one hand and the welfare of the general public on the other. This method of determining whether a state meets the requirements of due process is called the "balancing of interest" test. *See* Simes & Taylor, *The Improvement of Conveyancing by Legislation,* 255-56 (1960).

The Marketable Record Title Act, designed to simplify conveyances of real property, stabilize titles and give certainty to land ownership, is certainly legislation concerning the welfare of the public. *See Chicago Burlington & Quincy Railroad Company v. Illinois,* 200 U.S. 561, 592 (1906).

The city contends, however, that the retroactive nature of the Act makes it an arbitrary and unreasonable exercise of police power. But retroactive statutes have been almost universally declared constitutional when a reasonable time was given to protect property interests by complying with the new requirements. *Atchafalaya Land Co. v. F. B. Williams Cypress Co.,* 258 U.S. 284 (1922); *Wheeler v. Jackson,* 137 U.S. 245 (1890); *Vance v. Vance,* 108 U.S. 514 (1883).

Thus, the constitutional objection that retroactive application of a statute results in a deprivation of due process is obviated where the statute gives owners of old claims still enforceable at the time of the statutory enactment a reasonable time to take certain steps to preserve their interests.

For example, in *Vance v. Vance, supra,* the constitution of Louisiana was amended in April, 1868, to

provide that "the tacit mortgages and privileges now existing in the state shall cease to have effect against third persons after the first of January, 1870, unless duly recorded." Despite the retroactive effect of the statute in barring property rights conveyed prior to the enactment of the statute, the court held that the statutory limitation affecting those existing rights was constitutional. The court reasoned that such retroactive application was not prohibited by the due process clause of the Fourteenth Amendment because a reasonable time was given for the enforcement of the action before the bar took place.

Indeed, in *Wichelman v. Messner, supra,* the Minnesota Marketable Record Title Act was attacked on the very ground that its retroactive features violated due process of law. In upholding the Minnesota Act as a proper retroactive recording act the Supreme Court of Minnesota held:

> "The recordation provisions of the act provide for a simple and easy method by which the owner of an existing old interest may preserve it. If he fails to take the step of filing the notice as provided, he has himself to blame if his interest is extinguished. The constitutionality of imposing this duty would seem to have been settled beyond question by the decisions sustaining retroactive recording statutes. Scurlock, *Retroactive Legislation Affecting Interest in Land,* Mich. Legal Studies, p. 82; *Klasen v. Thompson, supra.*" 83 N.W.2d at 817.

Two Iowa cases have similarly upheld tha validity of the Iowa Marketable Record Title Act as against the same ground of attack. *Tesdell v. Hanes, supra; Lane v. Traveler's Ins. Co., supra.*

We are not confronted with the question of whether the Marketable Record Title Act can be utilized to divest the people of the State of Florida of sovereign lands held in public trust for them. This case is not similar to *Odom v. Deltona Corporation,* 341 So.2d 977 (Fla. 1977), where the Trustees of the Internal Improvement Fund without any notice to the public conveyed certain properties. In the case *sub judice,* the Legislature did not lose control of lands "irrevocably vested" in the trustees, *Trustees of Internal Improvement Fund v. Root,* 59 Fla. 648, 51 So. 535 (1910), so the grant to the city was effective. The validity of Chapter 8305, Special Acts of 1919, has been recognized by the Trustees of the Internal Improvement Fund. *Trustees of Internal Improvement Fund v. Claughton,* 86 So.2d 775, 785 (1956).

The Special Act granted to the city "for municipal purposes only" all of the state's "right, title and interest insofar as the same can be granted, to all submerged lands including waterfront and riparian rights." The provision that the grant was "for municipal purposes only" was not a reservation or exception, as nothing was severed from that which was granted. *See City of Jacksonville v. Shaffer,* 107 Fla. 567, 144 So. 888 (1932). This provision is a restriction on the use of the property and does not fall within the category of true easements. *See Moore v. Stevens,* 90 Fla. 879, 106 So. 901, 43 ALR 1127 (1925).

We next consider the question of whether the Marketable Record Title Act applies so as to bar claims of title in the subject property where it was previously held in public trust by the state, but later conveyed to the city. The city contends that certain exceptions in Florida Statutes, Section 712.94, prevent the application of the Marketable Record Title Act to the city's claim. This statute reads as follows:

> "Subject to the matters stated in §712.03, such marketable record title shall be free and clear of all estates, interests, claims or charges whatsoever, the existence of which depends upon any act, title transaction, event or omission that occurred prior to the effective date of the root of title. All such estates, interests, claims or charges, however denominated, whether such estates, interests, claims or charges are or appear to be held or asserted by a person sui juris or under a disability, whether such person is within or without the state, whether such person is natural or corporate, or is private or governmental, are hereby declared to be null and void, *except that this chapter shall not be deemed to affect any right, title or interest of the United States, Florida or any of its officers, boards, commissions or other agencies reserved in the patent or deed by which the United States, Florida or any of its agencies* parted with title." (emphasis supplied).

The city says that it is an agency of the State of Florida and thereby stands in the place of the state. The language of this section discloses a sharp distinction between the rights of the state and those of municipalities.

Under this section a reservation of an "interest in the state" is protected when expressly set forth in a conveyance from the state. The interest of a municipality is the same as that of any other person and may be extinguished by operation of the Act. The term agency (as contained in this section) does not include municipalities for Section 712.01(1) Florida Statutes, defining terms used in the act, contains the following:

> "The term 'person' as used herein denotes singular or plural, natural or corporate, private or governmental, including the state and any political subdivision or agency thereof as the context for the use thereof requires or denotes."

The city argues that its claim was not barred by the Marketable Record Title Act because the root of title relied on by St. Joe (i.e., the deed to it from Florida East Coast Hotel Corporation) is a wild deed. St. Joe counters with the argument that Florida East Coast Hotel Corporation acquired title by conveyance from Henry M. Flagler; therefore, St. Joe's root of title was not a wild deed. St. Joe relies upon *Marshall v. Hollywood, Inc., supra*, where Atlantic Beach Corporation, with Marshall as majority stockholder, acquired title to the real property in controversy in 1913. In 1924 a forged deed purported to convey the same property to defendant's predecessors. The defendant, Hollywood, Inc., claimed under a 1931 deed. The disputed land had remained wild, unimproved, and vacant. It was held that the trial court properly dismissed the complaint. Although the deed initiating the chain of title under which defendant claimed was forged and void, this deed formed but one link in the chain predating the effective root of title. The District Court of Appeal *(Marshall v.*

Hollywood, Inc., supra,) affirmed the judgment dismissing the complaint with prejudice and certified its decision to this court as being one which passed upon a question of great public interest. We approved the decision of the District Court of Appeal, saying:

> ". . . Claims arising out of transactions, whether based upon forgeries or not, predating the effective roots of title are extinguished by operation of the Act unless claimants can come in under any of the specified exceptions to the Act. In this case, petitioner fails to qualify under any of the exceptions to the Act, and, therefore, petitioner's claims are barred.
>
> "4. The certified question involved in this cause was, in effect, whether the Marketable Record Titles to Real Property Act, Ch. 712, F.S. confers marketability to a chain of title arising out of a forged or wild deed, so long as the strict requirements of the Act are met. This question is answered in the affirmative." *Marshall v. Hollywood, Inc.*, 236 So2d 114, 120.

In *Whaley v. Wotring*, 220 So.2d 177 (Fla. 1st DCA 1969), plaintiff's chain of title was based on his predecessor's 1908 deed, while defendant's root of title was a land patent issued in 1897. The court applied the Marketable Record Title Act and held that the patentee's heirs were precluded from asserting whatever claim, if any, they had under the 1897 land patent, since the 1908 deed in plaintiff's chain of title had been on record for more than thirty years. The court in its opinion said:

"The purpose of Chapter 712, Florida Statutes, F.S.A., the Marketable Record Title Act, is to render marketable any estate in land recorded for thirty years or more and to make same free and clear of any interest arising from a title transaction, act, event, or omission which occurred prior to the effective date of the root of title. 'Root of Title' is defined as the last title transaction recorded at least thirty years. All interest arising prior to root of title is declared null and void unless such interest falls within one of those classes specifically excepted. By legislative declaration this act is to be liberally construed to effect the purpose of simplifying and facilitating land title transactions by allowing persons to rely upon a deed recorded for a period of thirty years or more. The Act contains a provision for protecting those claims which it would extinguish." 220 So.2d at 181.

In *Wilson v. Kelley*, 226 So.2d 123 (Fla. 2d DCA 1969), the plaintiffs contended that an instrument could not qualify as a root of title within the contemplation of the Act unless it constitutes part of the chain of title emanating from the sovereign. In rejecting this contention the court said:

". . . To hold as suggested by plaintiffs would frustrate the Act's intended beneficial effects, and the Act's utility would largely be confined to the elimination of ancient use restrictions and to the curing of formal irregularities, a function already performed by other statutes and usually more quickly than the marketable title act.

"The Act, as a marketable title act, is not concerned with the quality of the title conveyed by the root of title so long as the root purports to convey the estate claimed. This can be so even though a deed is not part of the chain of title emanating from the sovereign and is therefore often called an 'interloping' or 'wild' deed. It can, under the marketable title acts, form a root of title which may eventually cut off the interest of a person who might otherwise have a claim. Therefore, a marketable title act can cure a break in the chain of title, if the break is sufficiently old." 226 So.2d at 127.

Unquestionably the deed from Flagler to Florida East Coast Hotel Corporation was a wild deed. The effective root of title was the deed from Florida East Coast Hotel Corporation to St. Joe Paper Company on January 10, 1944, and the wild deed was merely a link in a chain commencing before the effective root of title. The claim of the city would be barred under the reasoning in *Marshall v. Hollywood, Inc., supra.*

However, the city says that Florida East Coast Hotel Corporation did not have title to the submerged lands. The city argues that the conveyance of 14 acres "together with all and singular, the riparian rights and submerged lands appertaining thereto" was ineffective so that Florida East Coast Hotel Corporation held record title to nothing more than the initial 14 acres. To say otherwise, the city contends, would result in Florida East Coast Hotel Corporation holding title by a wild deed to the Atlantic Ocean bottom. St. Joe contends that this is immaterial, for the deed from Florida East Coast Hotel Corporation to St. Joe on January 10, 1944,

could constitute the root of title even though this conveyance may be classified as a wild deed. Florida East Coast Hotel Corporation bulkheaded and filled a portion of the property in question in 1920, but left a yacht basin. The deed to St. Joe conveyed all of the lands involved and, after 1944, St. Joe filled and bulkheaded the yacht basin. We are asked to hold, without equivocation, that a wild deed may constitute a root of title. We so hold.

The city argues that a wild deed is void and passes no interest whatsoever in the land. This being so, the city contends that a wild deed cannot be the foundation for a vested estate that would fall under the protection of the Act. The city states that the Act requires that there be a "root of title" which involves a "title transaction." A "title transaction" is defined by Florida Statutes, Section 712.01(3) as one which affects title. The city contends that a wild deed does not affect title.

This court, as well as the First, Second and Fourth District Courts of Appeal have made it clear that the Marketable Record Title Act deviates from common law and prior statutes and, by dicta, have said that a wild deed, properly executed and recorded, may establish a new and valid title after 30 years. *Marshall v. Hollywood, supra; Whaley v. Wortring, supra; Wilson v. Kelley, supra.*

This court in *ITT Rayonier, Inc., v. Wadsworth,* 346 So.2d 1004 (Fla. 1977) rejected the argument that only a valid deed could act as a root of title. In this decision the terms "root of title" and "title transaction" were construed as follows:

> ". . . It should be obvious that the deed 'purports' to create or transfer an estate. Purport is defined in Webster's 3d New International Dictionary unabridged (1962), as 'profess outwardly: have the often specious appearance of being.' Certainly the Legislature intended the word 'purport' to have its accepted meaning. The 1937 deed meets that meaning.
>
> "The deed 'affects title' and, in turn, is a title transaction as those terms have been construed in Florida. In *Marshall v. Hollywood, Inc.*, 224 So.2d 743 (Fla. 4th DCA 1969), the Fourth District Court, speaking through Judge Reed, stated at page 749:
>
> > 'The word "affecting" as it is used in the second sentence of Section 712.02 in the clause "affecting the title to the land" does not carry the narrow meaning of "changing or altering". The word is used in the broader sense meaning "concerning" or "producing an effect upon". In this broad sense, even a void instrument of record "affects" land titles by casting a cloud or doubt thereon. *Clements v. Henderson,* 1915, 70 Fla. 260, 70 So. 439; *Brown v. Solary,* 1896, 37 Fla. 102, 19 So. 161'." 346 So.2d at 1010.

In this case it appeared that Wadsworth, Sr., died in 1930 possessed of homestead property and survived by his widow and four children. The statute governing the descent of homestead provided that the surviving spouse would receive a life estate in the homestead

property subject to vested remainders in any children. In 1937 Mrs. Wadsworth, the surviving spouse, executed a deed conveying the entire fee simple to herself and her son as tenants in common. In 1942 Mrs. Wadsworth and her son conveyed the property to Rayonier. Rayonier claimed a Marketable Record Title free and clear of the children's vested remainder since that interest arose prior to the 1937 root of title.

The children argued that Florida Statutes, Section 712.03(1) preserves estates, interests, easements, and use restrictions disclosed by and defects inherent in the muniments of title on which the estate is based, beginning with the root of title. The children said that this statute preserved their interest because the 1937 deed had two inherent defects: 1) it conveyed their remainder interest and, 2) it conveyed property from Mrs. Wadsworth to herself. These arguments were rejected because the term "defects inherent in the muniments of title" do not refer to defects or failures in the transmission of title, but refer to defects in the makeup or constitution of the deed on which the transmission of title depends. The children's arguments were geared to defects in the transmission and there was nothing on the face of the deed to indicate that it conveyed the children's remainder interest, so those interests were not saved from extinguishment.

The 1944 deed to St. Joe purported to create an estate and qualified as a "root of title." The city gains no help from the provisions of Florida Statutes, Section 712.03(1) because there was nothing on the face of the deed to indicate that it conveyed any interest of the city. This court made it clear that Florida Statutes, Section 712.03(1) refers only to defects in the makeup of the deed when we said:

"Section 712.03, Florida Statutes, provides that marketable record title will not extinguish six categories of rights that predate the root of title. The first of them, found in subsection (1), is 'estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title.' The children argue that their remainder interests are within the first category because the 1937 deed has two inherent defects: (1) it conveyed their remainder interests and (2) it conveyed property from Lotta to herself. The phrasing of their argument shows a misunderstanding of the statute. As the Fourth District Court of Appeal stated in *Marshall:*

> "The terms 'defects inherent in the muniments of title' do not refer to defects or failures in the transmission of title, as the plaintiffs argument suggests, but refer to defects in the make up or constitution of the deed or other muniments of title on which such transmission depends." 224 So.2d at 751.

"The face of the deed does not reflect the defect of a conveyance from Lotta to herself." *ITT Rayonier, Inc., v. Wadsworth, supra,* at 1010.

The 1944 deed to St. Joe does not reflect that it was a wild deed nor does it appear that there is any defect in the makeup of the deed. This wild deed may properly constitute a "root of title."

The city also implies that the Marketable Record Title Act operates as a means whereby people can steal land. Florida Statutes, Section 712.03(6) excepts the rights of any person in whose name the land has been assessed on county tax rolls for a period of three years. This section of the statute requires that owners of land pay their taxes and by doing so, would stop any party from pirating their land. Moreover, an interest in land can be preserved by any party by filing a notice within the 30-year period subsequent to the root of title in accordance with Section 712.05, Florida Statutes.

The court in *Wilson v. Kelly, supra,* also noted the safeguards which would prevent an interloping deed from cutting off another person's deserving interest in favor of an underserving person. In this case the court said:

> "For those who are concerned with the likelihood that the Act will allow an interloping deed to cut off another person's deserving interest in favor of an undeserving person, there are safeguards in the Act to prevent this from happening. A claimant will not be cut off if he has been a party to any title transaction recorded within a period of not less than thirty years or if he files a simple notice prescribed by the Act during the time allowed for this purpose. He will not be cut off if he remains in possession or if the land is assessed to him on the tax roll. Even if it is no longer assessed to him he is protected if it was assessed to him at any time during the preceding three years. But if he has been a party to no title transaction recorded for at least thirty years during which

> time he has also failed to file the notice, and if for more than three years he has allowed the land to be assessed for taxation to someone else, and if neither he nor any person claiming under him is in possession of the land, it would not seem unjust that his claim should be subordinate to another person's claim that is based upon a chain of title going back to an instrument or court proceeding that has been recorded at least thirty years, and that 'purports to create or transfer the estate' claimed by the second person. In the public interest of simplifying and facilitating land title transactions, it does not seem unreasonable for the legislature to create a presumption that one who is negligent in claiming his land has abandoned his claim." 226 So.2d at 127.

In summary we point out that the question of whether the Marketable Record Title Act can be utilized to divest the state of sovereign land is not considered, as it is not an issue in the case. By this opinion we hold:

1) The Marketable Record Title Act is constitutional;

2) The city is not an agency of the state and does not stand in the place of the state in the application of the provisions of the Marketable Record Title Act;

3) A wild or interloping deed may constitute a root of title.

The decision of the District Court of Appeal, as well as the opinion expressing the views of the court, are approved. The writ of certiorari is discharged.

ENGLAND, C.J., BOYD, OVERTON, SUNDBERG, HATCHETT and ALDERMAN, JJ., Concur

IN THE SUPREME COURT OF FLORIDA
THURSDAY, DECEMBER 14, 1978

CASE NO. 51,775

District Court of Appeal,
Third District
76-423
76-686

CITY OF MIAMI, etc.,
Petitioner,

v.

ST. JOE PAPER COMPANY, etc., et al.,
Respondents.

Petitioner's Motion to Accept October 25th Filing is granted and upon consideration of the Motion for Rehearing and for Consideration of Constitutional Provisions and a Point of Law Not Dealt with by Court's October 5, 1978 Ruling filed by attorney for Petitioner,

IT IS FURTHER ordered by the Court that said motion be and the same is hereby denied.

IN THE SUPREME COURT OF FLORIDA
CASE NO. 51,775

CITY OF MIAMI,
a Florida municipal corporation,
Petitioner,

vs.

ST. JOE PAPER COMPANY, etc., et al.,
Respondents.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that City of Miami, the petitioner above-named, appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Florida, upholding the dismissal of the complaint, entered in this action on October 5, 1978, rehearing denied, December 14, 1978.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

GUY B. BAILEY, JR.
Suite 1820, One Biscayne Tower
Two South Biscayne Boulevard
Miami, Florida 33131
(305) 374-5505

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of March, 1979, a copy of the above and foregoing Notice of Appeal to the Supreme Court of the United States was mailed, postage prepaid, to Shutts and Bowen, 1000 Southeast First National Bank Building, Miami, Florida 33131; Sibley, Giblin, Levenson & Ward, 1301 Dade Boulevard, Miami Beach, Florida 33139; Steel, Hector and Davis, 1400 Southeast First National Bank Building, Miami, Florida 33131; and Russo, Van Doren and Allen, P.A., 4685 Ponce de Leon Boulevard, Coral Gables, Florida 33146. I further certify that all parties required to be served have been served.

GUY B. BAILEY, JR.
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of March, 1979, a copy of the above and foregoing Appellant's Jurisdictional Statement was mailed, postage prepaid, to Shutts and Bowen, 1000 Southeast First National Bank Building, Miami, Florida 33131; Sibley, Giblin, Levenson & Ward, 1301 Dade Boulevard, Miami Beach, Florida 33139; Steel, Hector and Davis, 1400 Southeast First National Bank Building, Miami, Florida 33131; and Russo, Van Doren and Allen, P.A., 4685 Ponce de Leon Boulevard, Coral Gables, Florida 33146. I further certify that all parties required to be served have been served.

Counsel for Appellant

Supreme Court, U. S.
FILED
APR 5 1979
MICHAEL RODAK, JR., CLERK

in the

Supreme Court

of the

United States

CASE NO. 78-1401

CITY OF MIAMI,
a Florida municipal corporation,
Appellant,

vs.

ST. JOE PAPER COMPANY, a Florida corporation; SOUTHEAST PROPERTIES, INC., a Florida corporation; HUGH E. MATHESON, JR., individually; and SALLY S. DOMMERICH, formerly Sally S. Matheson, individually,
Appellees.

On Appeal from the Supreme Court of Florida

APPELLEE ST. JOE PAPER COMPANY'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO AFFIRM

ERIC B. MEYERS
1000 Southeast First National Bank Building
Miami, Florida 33131
(305) 358-6300

MARION E. SIBLEY
P.O. Box 390360
Miami Beach, Florida
(305) 538-1461

Attorneys for Appellee St. Joe Paper Company

Of Counsel:

SHUTTS & BOWEN
Miami, Florida

SIBLEY, GIBLIN, LEVENSON & WARD
Miami Beach, Florida

TABLE OF CONTENTS

Page

INDEX OF AUTHORITIES ..... ii-iv

APPELLEE ST. JOE PAPER COMPANY'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO AFFIRM 2

RESTATEMENT OF THE FACTS 3-8

ARGUMENT:

THIS COURT SHOULD DISMISS OR AFFIRM THIS APPEAL BECAUSE IT DOES NOT PRESENT ANY SUBSTANTIAL FEDERAL QUESTION 9-20

CONCLUSION 20

CERTIFICATE OF SERVICE 21

TABLE OF AUTHORITIES

Cases: **Page**

Allied Structural Steel Company v. Spannaus, 98 Sup.Ct. 2716 (1978) 14, 15-16

Atchafalaya Land Co. v. F. B. Williams Cypress Co., 258 U.S. 190 (1922) 10, 13-14

City of El Paso v. Simmons, 379 U.S. 497 (1965) 10, 11-12

City of Miami v. St. Joe Paper Company, 364 So.2d 439 (Fla. 1978) 4

Exchange National Bank v. Lawndale National Bank, 243 N.E.2d 193 (Ill. 1968) 16-17

Home Building & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934) 10, 12-13

Lane v. Traveler's Insurance Company, 299 N.W. 553 (Iowa 1941) 10

Marshall v. Hollywood, Inc., 224 So.2d 743 (Fla. 4 DCA 1969), *aff'd.*, 236 So.2d 114 (Fla.), *cert. denied*, 400 U.S. 964 (1970) 9, 18

Mattson v. Department of Labor and Industries, 293 U.S. 151 (1934) 10

TABLE OF AUTHORITIES (Continued)

Cases: **Page**

Terry v. Anderson, 95 U.S. 628 (1877) 10

Tesdell v. Hanes, 82 N.W.2d 119 (Iowa 1957) 9-10

Turner v. People of State of New York, 168 U.S. 90 (1897) 10

United States Trust Company v. New Jersey, 431 U.S. 1 (1977) 14, 15

Vance v. Vance, 108 U.S. 514 (1883) 10

Whaley v. Wotring, 225 So.2d 177 (Fla. 1 DCA 1969) 18

Wichelman v. Messner, 83 N.W.2d 800 (Minn. 1957) 9, 16

Wilson v. Kelly, 226 So.2d 123 (Fla. 2 DCA 1969) 18

Statutory Provisions:

Fla. Stat. Chapter 712 ..... *Passim*

Marketable Record Title Acts of 17 States 9

Minnesota Laws 1959, Ch. 492, approved April 24, 1959 16

TABLE OF AUTHORITIES (Continued)

Other Authorities: **Page**

Comment, *Marketable Record Title Act: Forged and Void Deeds as Roots of Title*, 22 U. of Fla. L. Rev. 669 (1970) 19

Note, *Constitutionality of Market Title Legislation*, 47 Iowa L. Rev. 413 (1962) 10

J. Webster, *The Quest for Clear Land Titles*, 44 N.C. L.Rev. 89 (1965) 17

in the

Supreme Court

of the

United States

CASE NO. 78-1401

CITY OF MIAMI,
a Florida municipal corporation,
Appellant,

vs.

ST. JOE PAPER COMPANY, a Florida corporation; SOUTHEAST PROPERTIES, INC., a Florida corporation; HUGH E. MATHESON, JR., individually; and SALLY S. DOMMERICH, formerly Sally S. Matheson, individually,
Appellees.

On Appeal from the Supreme Court of Florida

APPELLEE ST. JOE PAPER COMPANY'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO AFFIRM

APPELLEE ST. JOE PAPER COMPANY'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO AFFIRM

Appellee St. Joe Paper Company ("St. Joe"), pursuant to Rule 16 of the Rules of this Court, respectfully moves the Court for the entry of an order dismissing this appeal on the ground that it does not present a substantial federal question or, alternatively, moves the Court for the entry of an order affirming the order appealed from on the ground that any federal question raised by this appeal is insubstantial and does not need further argument.

RESTATEMENT OF THE FACTS

By warranty deed dated December 15, 1898, Henry M. Flagler conveyed to Florida East Coast Hotel Corporation portions of the mainland located north of the Miami River and adjacent to Biscayne Bay "containing fourteen acres, more or less, together with all and singular riparian rights and submerged lands appertaining thereto."

On June 2, 1919, the Florida Legislature passed a special Act granting to appellant, City of Miami (the "City"), all of the State of Florida's rights, title and interest to certain submerged lands of Biscayne Bay abutting the City's shoreline. This grant by the State to the City specifically provided that it did not affect any other grant made to any individual or corporation and that nothing therein shall be construed as depriving any riparian owner or proprietor of any rights.

By warranty deed dated January 10, 1944 (the "Deed"), Florida East Coast Hotel Corporation conveyed to St. Joe the property at issue in this lawsuit — which is a portion of the property originally conveyed by Flagler to Florida East Coast Hotel Corporation in 1898. Except for a yacht basin, the property which was conveyed to St. Joe in 1944 had been bulkheaded and filled by Florida East Coast Hotel Corporation in or about 1920.

The City makes a great deal in its Jurisdictional Statement of the purported fact that the Deed to St. Joe was *"a wild deed of which it [the City] had no notice."*[1]

[1]City's Jurisdictional Statement at 31. Emphasis in original.

The City's unsupported representation that it had no actual notice of St. Joe's claim to the property is not true, and is inconsistent with the record of this case. The record clearly shows that by at least February 3, 1949 — well before any purported competing claim of the City was extinguished by the Florida Marketable Record Title Act (the "Act") on January 10, 1974 — the City indeed had actual notice of St. Joe's claim to and possession of the property.

On February 3, 1949, St. Joe recorded a plat of the lands involved, and the record shows that the plat was approved by the City prior to its recordation. *See City of Miami v. St. Joe Paper Company,* 364 So.2d 439, 442 (Fla. 1978). Some time after the Deed was recorded on January 10, 1944, St. Joe openly filled and bulkheaded the yacht basin, which constitutes a part of this property. Subsequent to recording the Deed, St. Joe was assessed by the City and continuously paid ad valorem taxes on the property to the City — the property being carried on the City's tax rolls as owned by St. Joe.[2] On February 12, 1973, almost one year before the Act's bar, the City instituted an unsuccessful action in municipal eminent domain to condemn St. Joe's property for park purposes.[3] And St. Joe has openly been in actual possession of the property since 1944.

[2]At the hearing on St. Joe's motion to dismiss the City's amended complaint, the trial judge took judicial notice that St. Joe paid such taxes.

[3]The condemnation action is a matter of public record, having been filed in the Circuit Court for the Eleventh Judicial Circuit in and for Dade County, Florida and given Case No. 73-2506. Mention of such condemnation action is prompted by the City's gross misrepresentation to this Court quoted above.

Effective July 1, 1963, the Florida Legislature passed the Act, Chapter 712 of the Florida Statutes ("Fla.Stat."), whose purpose is to eliminate automatically with the passage of time old title defects in interest, shorten the necessary title examinations, and promote and encourage free alienation of real property.

The Act extinguishes, with certain specified exceptions, all claims of thirty years or more which conflict with a record chain of title which is at least that old. Fla.Stat. §712.01.

In addition to providing that the Act shall not extinguish certain claims of the United States or Florida, the Act lists six exceptions[4] to its bar to claims made 30

[4]Because of its importance, Fla.Stat. §712.03 is set out below in its entirety:

> "712.03. EXCEPTIONS TO MARKETABILITY. — Such marketable record title shall not affect or extinguish the following rights:
>
> (1) Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title; provided, however, that a general reference in any of such muniments to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them unless specific identification by reference to book and page of record or by name of recorded plat be made therein to a recorded title transaction which imposed, transferred or continued such easement, use restrictions or other interests; subject, however, to the provisions of subsection (5).
>
> (2) Estates, interests, claims or charges preserved by the filing of a proper notice in accordance with the provisions hereof.

years after the effective date of the root of title.[5]

---

(3) Rights of any person in possession of the lands, so long as such person is in such possession.

(4) Estates, interests, claims, or charges arising out of a title transaction which has been recorded subsequent to the effective date of the root of title.

(5) Recorded or unrecorded easements or rights, interest or servitude in the nature of easements, rights-of-way and terminal facilities, including those of a public utility or of a governmental agency, so long as the same are used and the use of any part thereof shall except from the operation hereof the right to the entire use thereof. No notice need be filed in order to preserve the lien of any mortgage or deed of trust or any supplement thereto encumbering any such recorded or unrecorded easements, or rights, interest, or servitude in the nature of easements, rights-of-way, and terminal facilities. However, nothing herein shall be construed as preserving to the mortgagee or grantee of any such mortgage or deed of trust or any supplement thereto any greater rights than the rights of the mortgagor or grantor.

(6) Rights of any person in whose name the land is assessed on the county tax rolls for such period of time as the land is so assessed and which rights are preserved for a period of 3 years after the land is last assessed in such person's name."

[5]Root of Title means:

"any title transaction purporting to create or transfer the estate claimed by any person and which is the last title transaction to have been recorded at least 30 years prior to the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded." Fla.Stat. §712.01(2).

Thus, under the Act, in order to prevent its claim from being extinguished 30 years after another person's subsequent title transaction[6] is recorded, the claimant need only perform *one* of the following acts, *inter alia:*

1. File for record a simple written notice of claim anytime during the 30 year period immediately following the effective date of the root of title. Fla.Stat. §712.03(2).

2. Take possession to the lands anytime during the 30 year period immediately following the effective date of the root of title and continue in such possession. Fla.Stat. §712.03(3).

3. Record a title transaction subsequent to but within 30 years from the effective date of the other person's root of title. Fla.Stat. §712.03(4).

4. Cause the land to be carried on the tax rolls in the name of the claimant. Fla.Stat. §712.03(6).

Thus, according to the Act, the City had until January 10, 1974 (almost 11 years after the effective date of the Act) within which to assert or protect any claim it might have had to the property. The City could have commenced a lawsuit during that time, but it did not. The City could have but did not file a notice of claim in accordance with the provisions of the Act. The City could have and should have taken possession of the property if it owned it, but of course it did not. The City did not record a title transaction to the property. The

---

[6]"Title transaction means any recorded instrument or court proceeding which affects title to any estate or interest in land." Fla.Stat. §712.01(3).

City could have caused the land to be carried on the tax rolls in its (the City's) name; instead, the City carried the land on the tax rolls as being owned by St. Joe and the City assessed and collected taxes from St. Joe. Indeed, nowhere is it alleged that any time after June 2, 1919 (the date of the grant by the Florida Legislature that the City now relies on as creating its claim to the property) did the City ever exercise or seek to exercise any ownership right in the property, until September 2, 1975 when it filed this lawsuit.

Thus, even according to the City's own allegations, for a period of over 56 years prior to the filing of this lawsuit St. Joe and its predecessors in title exercised every possible incident of ownership to the property. The City never exercised *any* incident of ownership.

THIS COURT SHOULD DISMISS OR AFFIRM THIS APPEAL BECAUSE IT DOES NOT PRESENT ANY SUBSTANTIAL FEDERAL QUESTION

The expressed legislative purpose of the Act is to simplify and facilitate land title transactions by allowing persons to rely on record titles. Fla.Stat. §712.10. In light of such underlying aims, one Florida appellate court has declared that the Act "is undoubtedly the most important piece of legislation dealing with real property titles enacted in the State of Florida in many years".[7]

Currently, at least seventeen states[8] have marketable record title acts. High courts of other states unanimously have ruled that their respective marketable title acts are constitutional. *See Wichelman v. Messner,* 83 N.W.2d 800 (Minn. 1957) (in depth discussion of the act's constitutionality); *Tesdell v. Hanes,* 82 N.W.2d 119, 123 (Iowa 1957) ("We are satisfied the

[7]*Marshall v. Hollywood, Inc.,* 224 So.2d 743, 748 (Fla. 4 DCA 1969), *aff'd.,* 236 So.2d 114 (Fla.), *cert. denied,* 400 U.S. 964 (1970).

[8]Conn. Gen. Stat. Title 47, Ch. 821 §47-33b to 33l (1967); Fla. Stat.Ann. Ch. 712; Ill. Ann. Stat. Ch. 83, §12.1-.4 (Smith-Hurd 1966 Supp. 1971); Ind. Ann. Stat. §§56-1011 to 1110 (Supp. 1967); Iowa Code Ann. §§614.17-.20 (1946, Supp. 1966); Kan. Stat. Ann. §§58.3401 to 3412 (1974); Mich. Comp. Laws §§565.101-109 (1967); Minn. Stat. Ann. §541.023 (Supp 1966); Neb. Reve. Stat. §§76-288 (1958); N.C. Gen. Stat. Chap. 47B (1973); N.D. Cent. Code §§47-19A-01 to 11 (1960); Ohio Rev. Code Ann. §§5301.47-.56 (1966 Page Supp. 1974); Okla. Stat. Ann. Title 16, §§71-81 (Supp. 1974); S.D. Compiled Laws Ann. 1967 43-40-1 through 15 (1967); Utah Code Ann. §57-0-1 to 10 (1963 Supp. 1975); Vt., Stat. Ann. 27-601 to 06 (1970); Wis. Stat. Ann. §893.15 (1966).

legislature had ample authority to make a limitation statute * * * subject to a condition that a reasonable time must elapse before it becomes effective".); *Lane v. Traveler's Insurance Company,* 299 N.W. 553, 555 (Iowa 1941) ("little doubt of the desirability of statutes giving greater effect and stability to record titles".) *See also* discussion in *Note, Constitutionality of Market Title Legislation,* 47 Iowa L.Rev. 413, 428-29 (1962).

This Court's many decisions on the constitutionality of other statutes of limitations show that the Act does not offend the Due Process, Taking or Contract Clauses of the Constitution of the United States. *See, e.g., City of El Paso v. Simmons,* 379 U.S. 497 (1965); *Mattson v. Department of Labor and Industries,* 293 U.S. 151 (1934) (Three year statute of limitations on application for readjustment of compensation held not a denial of due process on ground it destroyed vested right of employee injured before the statute of limitations' enactment.); *Home Building & Loan Ass'n. v. Blaisdell,* 290 U.S. 398 (1934); *Atchafalaya Land Co. v. F. B. Williams Cypress Co.,* 258 U.S. 190 (1922); *Turner v. People of State of New York,* 168 U.S. 90 (1897) (Statute making tax deed which had been on record for two years prior to the statute's passage conclusive evidence of the regularity of sale if not assailed by direct proceeding within six months after the statute took effect "is not repugnant to any provision of the Constitution of the United States."); *Vance v. Vance,* 108 U.S. 514 (1883) (Statute providing that existing tacit mortgages and privileges shall cease to have effect unless recorded within 20 months after the statute's enactment does not violate Due Process or Contract Clauses.); *Terry v. Anderson,* 95 U.S. 628 (1877).

In *City of El Paso v. Simmons, supra,* land was sold by the State of Texas in 1910 under a statute providing for forfeiture of land to the State in the event of nonpayment of interest under the contract for sale, and also providing that, in case of forfeiture, the purchaser or his vendee could reinstate his claim by paying the full amount of interest due. In 1941 the statute was amended to limit the right of reinstatement to five years from the date of forfeiture. The land in question was forfeited on July 21, 1947, plaintiff took quick claim deeds and on July 23, 1952 filed untimely applications for reinstatement. In holding that the amendment did not violate the Contract Clause, this Court said:

> "For it is not every modification of a contractual promise that impairs the obligation of contract under federal law, any more than it is ever alteration of existing remedies that violates the Contract Clause." 379 U.S. at 507-08.
>
> * * *
>
> "But we think the objects of the Texas statute make abundantly clear that it impairs no protected right under the Contract Clause." *Id.* at 509.
>
> * * *
>
> "The general purpose of the legislation enacted in 1941 was to restore confidence in the stability and integrity of land titles * * *." *Id.* at 511.
>
> * * *

"The Contract Clause of the Constitution does not render Texas powerless to take effective and necessary measures to deal with the above. We note at the outset that the promise of reinstatement, whether deemed remedial or substantive, was not the central undertaking of the seller nor the primary consideration for the buyer's undertaking." *Id.* at 513-14.

* * *

"The measure taken to induce defaulting purchasers to comply with their contracts, requiring payment of interest in arrears within five years, was a mild one indeed, hardly burdensome to the purchaser who wanted to adhere to his contract of purchase, but nonetheless an important one to the State's interest. The Contract Clause does not forbid such a measure." *Id.* at 516-17.

Home Building & Loan Ass'n. v. Blaisdell, supra, involved a statute enlarging the mortgagor's right by extending the time of redemption, a measure that the state court characterized as an impairment of the obligation of the mortgage contract. There, this Court rejected the contention that this impairment contravened the Contract Clause. This Court stated:

"[Judicial decisions] put it beyond question that the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula." 290 U.S. at 428.

* * *

"The economic interests of the State may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts." *Id.* at 437.

* * *

"The question is not whether the legislative action effects contracts incidentally, or directly or indirectly, but whether the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end." *Id.* at 438.

Atchafalaya Land Co. v. F. B. Williams Cypress Co., supra, has already decided the City's claim of unconstitutionality. In *Atchafalaya* this Court determined that neither the Due Process nor Contract Clauses constitutionally prohibit the application of a statute of limitations enacted in 1912 to successors of a patent grantee from Louisiana in 1903. This Court stated:

"We are concerned alone with the power of the state to pass the statute of limitations of 1912, and we agree with the Supreme Court [of Louisiana] that such statutes are valid if they allow a reasonable time after their enactment, for the assertion of an existing right or the enforcement of an existing obligation, and certainly the condition was satisfied by the statute of 1912. Besides having over six years after its enactment to assert their rights, plaintiffs in error, adding their time and that of their predecessors, had nearly a quarter of a century to confirm and fix whatever rights they had to the lands in controversy.

Passing, however, all considerations of details and local aspects of the case, we are of the opinion that none of the invoked provisions of the Constitution of the United States are offended even under the construction plaintiffs in error give to the asserted grant to the Board of Commissioners and its conveyance to Wisner and Dresser. The act of prescription was a proper exercise of sovereignty. The state could recognize, as it did recognize, that there might be claims derived from it, asserted or to be asserted, rightfully or wrongfully, involving conflicts which should be decided and quieted in the public interest, and therefore, enacted the statute. And such is the rationale of statutes of limitations. They do not necessarily lessen rights of property or impair the obligation of contracts. Their requirement is that the rights and obligations be asserted within a prescribed time. If that be adequate, the requirement is legal, and its justice and wisdom have the testimony of the practices of the world." 258 U.S. at 196-97.

United States Trust Company v. New Jersey, 431 U.S. 1 (1977) and *Allied Structural Steel Company v. Spannaus*, 98 Sup.Ct. 2716 (1978), cited by the City, do not involve statutes of limitations nor do they conflict

with this Court's many prior decisions regarding statutes of limitations.[9]

In the case at bar, the Supreme Court of Florida found that the Act "is a comprehensive plan for forming conveyancing procedures." 364 So.2d at 442. In addition, the Court found that the Act, "designed to simplify conveyances of real property, stabilize titles and give certainty to land ownership, is certainly legislation concerning the welfare of the public." *Id.* at 444. Furthermore, unlike plaintiffs in *United States Trust Company v. New Jersey, supra,* and *Allied Structural Steel Com-*

[9]In *United States Trust Company v. New Jersey, supra,* the issue was whether the New Jersey Legislature could repeal its own statutory covenant which assured private investors in the interstate Port Authority that a certain portion of a reserve fund would be irrevocably placed as security for the investors' Port Authority bonds. After noting that "the Contract Clause does not prohibit the State from repealing or amending statutes generally, or from enacting legislation with retroactive effect" (431 U.S. at 17), this Court struck down the repealing statute. Its opinion gave great weight to the fact that bond holders had no way to avoid the drastic impact of the repeal upon the reserve funds that they had relied upon as security when investing in the Port Authority. Moreover, this Court found that the impairment of contract was not necessary to achieve the states' goal.

In *Allied Structural Steel Company v. Spannaus, supra,* an employer challenged the constitutionality of Minnesota's 1974 Private Pension Benefit Act. In holding that such act unconstitutionally impaired the employer's contractual obligations to its employees, this Court emphasized the "unexpected liability" the statute imposed and the utter impossibility of the employer's avoiding the act's retrospective application. 98 S.Ct. at 2724-25. In addition, this Court stated that "[t]he law was not even purportedly enacted to deal with a broad, generalized economic or social problem." *Id.* at 2725.

pany v. Spannaus, supra, the City had ten and one-half years to protect or assert the claim it now makes to the property.

The City contends that the Act cannot constitutionally be applied to a wild deed.[10] Yet, the City has failed to cite a single case in which a marketable record title act was held unconstitutional as applying to a wild deed. There are none. In *Wichelman v. Messner,* supra at 819, cited by the City, the court merely determined that the Minnesota act did not purport to cover a wild deed. The court stated:

> "We do not think that the statute lends itself to an interpretation to the effect that title may be founded on a stray, accidental, or interloping conveyance."

Thereafter, the Minnesota Legislature amended its act so that any recorded fee simple transaction will serve as a point of beginning for a chain of title contemplated by the act. Minnesota Laws 1959, Ch. 492, approved April 24, 1959. In *Exchange National Bank v. Lawndale National Bank,* 243 N.E.2d 193, 195 (Ill. 1968), cited by the City, the court expressly recognized that the Illinois act was different than those of other states in its application to a wild deed, stating:

[10]Such contention is different than the City's additional contention that the Supreme Court of Florida improperly interpreted the Act to permit a wild deed to form a root of title because a wild deed is void and of no effect. The latter contention involves questions of interpretation of State law and not Federal law.

> "Commentators in considering marketable title acts have recognized the possibility of two record titles existing at one time because of a 'wild deed' and in some States the possibility of this occurrence has been provided for by statute. (See Simes and Taylor, The Improvement of Conveyancing by Legislation, p. 353, 1960; Webster, the Quest for Clear Land Titles, (1965) 44 N.C.L. Rev. 89.) Our statute does not so provide."

In the article referred to above by J. Webster, *The Quest for Clear Land Titles,* 44 N.C. L. Rev. 89, 108-13 (1965), the author wrote that the North Carolina act applied to wild deeds because of sections therein which made the act inapplicable to extinguish the rights of those in possession and those who are listed as the owners on the county tax books. Unlike the Illinois statute, the Florida Act contains each of these exceptions contained in the North Carolina act. *See* Fla.Stat. §712.03(3) and (6).

In the instant case, the Supreme Court of Florida did not hold that every wild deed may act as a "root of title", but that "[t]his wild deed may properly constitute a 'root of title'." 364 So.2d at 448.

The City has failed to advance a single viable argument as to why the Deed constitutionally may not constitute a "root of title". The City contends that it had no prior notice of the Deed, it had no prior notice that the Act may apply to a wild deed, and that the Act's application to a wild deed is unreasonable. Of course, each of these arguments is at odds with the facts and is unsupported by the law.

As stated before, the City's claim that it had no notice of the Deed prior to the Act's extinguishing the City's claim misrepresents the facts. The City's prior actual notice of the Deed is shown by the City's approval of the plat recorded by St. Joe on February 13, 1949, by St. Joe's payments to the City of taxes on the property, and by the City's institution on February 12, 1973 of its unsuccessful action in municipal eminent domain to condemn the property.

The City's argument that, prior to the Act's extinguishing the City's claim, it had no notice the Act may apply to a wild deed is specious. The Supreme Court of Florida's interpretation in this case is the very same or similar to the interpretations made by that Court and two Florida district courts of appeal in three prior cases. *See Marshall v. Hollywood, Inc., supra; Wilson v. Kelly,* 226 So.2d 123 (Fla. 2 DCA 1969); *Whaley v. Wotring,* 225 So.2d 177 (Fla. 1 DCA 1969).

In view of the six exceptions engrafted in the Act, the City's argument that the Act unreasonably applies to wild deeds should also be rejected. In order to protect its claim, the City need only to have, *inter alia*, filed for record a simple written notice of claim any time during the ten and one-half year period immediately following the Act's passage, taken possession of the property any time during the 30 year period immediately following the recordation of the Deed and continued in such possession, recorded a title transaction subsequent to but within 30 years from the recordation of the Deed, or caused the property to be carried on the tax rolls in the name of the City. Having done none of these things, naturally the City now claims that the Act unreasonably applies to a wild deed and implies that the order appealed from will give aid and comfort to land pirates. However, in Comment, *Marketable Record Title Act: Forged and Void Deeds as Roots of Title*, 22 U. of Fla. L. Rev. 669 (1970), in discarding the argument that application of the Act to wild deeds will encourage land pirates, one commentator reasoned:

> "The contention should not be taken seriously because the situation found in the instant case rarely occurs. Since at least one title transaction will occur every thirty years on most real estate, Florida Statutes, section 712.03(4), should save the 'live' senior claim from extinguishment. Because of explicit safeguards in the Act few competing junior claims are likely to survive on record long enough to prevail. However, if a senior grantee is remiss in seeking the protection of the Act, then '[i]n the public interest of simplifying and facilitating land title transactions, it does not seem unreasonable for the legislature to create a presumption that one who is negligent in claiming his land has abandoned his claim'." 22 U. of Fla. L. Rev. at 673.

The City's argument that the application of the Act to a wild deed results in constitutional prohibitions does not present a substantial federal question. This is not a case where the City exercised ownership rights throughout the period in question and was surprised by an alleged wild deed surreptitiously filed in the dark of night. Indeed, had the City exercised any of a number of ownership rights during the 30 year period after the Deed was recorded or if the City had taken certain

enumerated steps to protect its claim during the ten and one-half year period after the Act became effective, the Act would not have extinguished the City's claim.

CONCLUSION

For the foregoing reasons, this Court should dismiss the City's appeal or, in the alternative, affirm the order of the Supreme Court of Florida.

Respectfully submitted,

ERIC B. MEYERS
1000 Southeast First National
Bank Building
Miami, Florida 33131
(305) 358-6300

MARION E. SIBLEY
P.O. Box 390360
Miami Beach, Florida
(305) 538-1461
Attorneys for Appellee
St. Joe Paper Company

Of Counsel:

SHUTTS & BOWEN
Miami, Florida

SIBLEY, GIBLIN, LEVENSON
& WARD
Miami Beach, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of April, 1979, 3 copies of the above and foregoing Appellee St. Joe Paper Company's Motion to Dismiss or, in the Alternative, Motion to Affirm was mailed, postage prepaid, to Guy B. Bailey, Jr., Esquire, Suite 1820, One Biscayne Tower, Two South Biscayne Boulevard, Miami, Florida 33131; Steel, Hector and Davis, 1400 Southeast First National Bank Building, Miami, Florida 33131; and Russo, Van Doren and Allen, P.A., 4685 Ponce de Leon Boulevard, Coral Gables, Florida 33146. I further certify that all parties required to be served have been served.

Eric B. Meyers

Supreme Court, U. S.
FILED
APR 4 1979
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

No. 78-1401

CITY OF MIAMI, a Florida Municipal Corporation,
Appellant,

vs.

ST. JOE PAPER COMPANY, a Florida Corporation; SOUTHEAST PROPERTIES, INC., a Florida Corporation; HUGH E. MATHESON, JR., Individually; and SALLY S. DOMMERICH, Formerly Sally S. Matheson, Individually,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

APPELLEE SOUTHEAST PROPERTIES, INC. MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO AFFIRM

DWIGHT SULLIVAN
1400 Southeast First National Bank Building
Miami, Florida 33131
(305) 577-2854
Attorney for Appellee, Southeast Properties, Inc.

Of Counsel:
STEEL HECTOR & DAVIS
Miami, Florida

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

In the Supreme Court of the United States

No. 78-1401

CITY OF MIAMI, a Florida Municipal Corporation,
Appellant,

vs.

ST. JOE PAPER COMPANY, a Florida Corporation; SOUTHEAST PROPERTIES, INC., a Florida Corporation; HUGH E. MATHESON, JR., Individually; and SALLY S. DOMMERICH, Formerly Sally S. Matheson, Individually,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

APPELLEE SOUTHEAST PROPERTIES, INC. MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO AFFIRM

Appellee, Southeast Properties, Inc. (Southeast), pursuant to Rule 16 of the Rules of this Court, respectfully moves the Court for the entry of an order dismissing this appeal on the ground that it does not present a substantial federal question or, alternatively, moves the Court for the entry of an order affirming the order appealed from on the ground that any federal question raised by this appeal is insubstantial and does not need further argument.

RESTATEMENT OF THE FACTS

As appears from the opinion of the District Court of Appeal of Florida, Third District (Appellant's Jurisdictional Statement, App. 15), the title of Southeast derives from the 1944 deed to the St. Joe Paper Company (St. Joe).

For the purpose of this appeal, Southeast's position is the same as that of St. Joe. Southeast, therefore, adopts the arguments and authorities set forth in St. Joe's motion.

CONCLUSION

For the foregoing reasons, this Court should dismiss the City's appeal or, in the alternative, affirm the order of the Supreme Court of Florida.

Respectfully submitted,

DWIGHT SULLIVAN
1400 Southeast First National Bank Building
Miami, Florida 33131
(305) 577-2854
Attorney for Appellee, Southeast Properties, Inc.

Of Counsel:
STEEL HECTOR & DAVIS
Miami, Florida

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April, 1979, a copy of the above and foregoing Appellee's Motion to Dismiss or, in the Alternative, Motion to Affirm was mailed, postage prepaid, to Guy B. Bailey, Jr., Esquire, Suite 1820, One Biscayne Tower, Two South Biscayne Boulevard, Miami, Florida 33131; Russo, Van Doren and Allen, P.A., 4685 Ponce de Leon Boulevard, Coral Gables, Florida 33146; Eric B. Meyers, Esquire, 1000 Southeast First National Bank Building, Miami, Florida 33131 and Marion E. Sibley, Esquire, Post Office Box 390360, Miami Beach, Florida 33139.

I further certify that all parties required to be served have been served.

DWIGHT SULLIVAN
Of Counsel

Supreme Court, U. S.
FILED
APR 5 1979
MICHAEL RODAK, JR., CLERK

in the

Supreme Court

of the

United States

CASE NO. 78-1401

CITY OF MIAMI,
a Florida municipal corporation,
Appellant,

vs.

ST. JOE PAPER COMPANY, a Florida corporation; SOUTHEAST PROPERTIES, INC., a Florida corporation; HUGH E. MATHESON, JR., individually; and SALLY S. DOMMERICH, formerly Sally S. Matheson, individually,
Appellees.

On Appeal from the Supreme Court of Florida

MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO AFFIRM OF APPELLEES SALLY S. DOMMERICH AND HUGH E. MATHESON, JR.

ERIC B. MEYERS
1000 Southeast First National Bank Building
Miami, Florida 33131
(305) 358-6300
Attorney for Appellee Sally S. Dommerich

EDMUND P. RUSSO
4685 Ponce de Leon Boulevard
Coral Gables, Florida 33146
(305) 665-0414
Attorney for Appellee Hugh E. Matheson, Jr.

Of Counsel:

SHUTTS & BOWEN
Miami, Florida

RUSSO, VAN DOREN AND ALLEN, P.A.
Coral Gables, Florida

in the

Supreme Court

of the

United States

CASE NO. 78-1401

CITY OF MIAMI,
a Florida municipal corporation,
Appellant,

vs.

ST. JOE PAPER COMPANY, a Florida corporation; SOUTHEAST PROPERTIES, INC., a Florida corporation; HUGH E. MATHESON, JR., individually; and SALLY S. DOMMERICH, formerly Sally S. Matheson, individually,
Appellees.

On Appeal from the Supreme Court of Florida

MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO AFFIRM OF APPELLEES SALLY S. DOMMERICH AND HUGH E. MATHESON, JR.

MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO AFFIRM OF APPELLEES SALLY S. DOMMERICH AND HUGH E. MATHESON, JR.

Appellees Sally S. Dommerich and Hugh E. Matheson, Jr., pursuant to Rule 16 of the Rules of this Court, respectfully move the Court for the entry of an order dismissing this appeal on the ground that it does not present a substantial federal question or, alternatively, move the Court for the entry of an order affirming the order appealed from on the ground that any federal question raised by this appeal is insubstantial and does not need further argument. In support of their motion, appellees Sally S. Dommerich and Hugh E. Matheson, Jr. rely upon the facts and argument contained in the similar motion and brief filed by appellee St. Joe Paper Company.

Respectfully submitted,

ERIC B. MEYERS
1000 Southeast First National
Bank Building
Miami, Florida 33131
(305) 358-6300
Attorney for Appellee
Sally S. Dommerich

EDMUND P. RUSSO
4685 Ponce de Leon Boulevard
Coral Gables, Florida 33146
(305) 665-0414
Attorney for Appellee
Hugh E. Matheson, Jr.

Of Counsel:

SHUTTS & BOWEN
Miami, Florida

RUSSO, VAN DOREN AND
ALLEN, P.A.
Coral Gables, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of April, 1979, 3 copies of the above and foregoing Motion to Dismiss or, in the Alternative, Motion to Affirm of Appellees Sally S. Dommerich and Hugh E. Matheson, Jr., was mailed, postage prepaid, to Guy B. Bailey, Jr., Esquire, Suite 1820, One Biscayne Tower, Two South Biscayne Boulevard, Miami, Florida 33131; Sibley, Giblin, Levenson & Ward, 1301 Dade Boulevard, Miami Beach, Florida 33139; and Steel, Hector and Davis, 1400 Southeast First National Bank Building, Miami, Florida 33131. I further certify that all parties required to be served have been served.

Eric B. Meyers

Supreme Court, U. S.
FILED
APR 20 1979
MICHAEL RODAK, JR., CLERK

in the

Supreme Court

of the

United States

CASE NO. 78-1401

CITY OF MIAMI,
a Florida municipal corporation,
Appellant,

vs.

ST. JOE PAPER COMPANY, a Florida corporation; SOUTHEAST PROPERTIES, INC., a Florida corporation; HUGH E. MATHESON, JR., individually; and SALLY S. DOMMERICH, formerly Sally S. Matheson, individually,
Appellees.

On Appeal from the Florida Supreme Court

REPLY TO MOTION TO DISMISS OR AFFIRM

GUY B. BAILEY, JR.
Attorney for Appellant
Suite 1820,
One Biscayne Tower
Two South Biscayne Boulevard
Miami, Florida 33131
(305) 374-5505

OF COUNSEL
JESSE C. JONES
Suite 1820, One Biscayne Tower
Two South Biscayne Boulevard
Miami, Florida 33131

TABLE OF CONTENTS

	Page
INDEX OF AUTHORITIES	ii
REPLY TO RESTATEMENT OF THE CASE	3
THE QUESTIONS ARE SUBSTANTIAL	7
Contract Clause	7
Taking	10
Due Process	11
CONCLUSION	12

INDEX OF AUTHORITIES

Page

Judicial Decisions

Allied Structural Steel Co. v. Spannaus, 98 S.Ct. 2716 (1978) 7, 9, 11

Beach Front Hotel Co. v. Sooy, 197 Fed. 881 (3d Cir. (1912) 4

Brinkerhoff-Faris Trust & Savings Company v. Hill, 281 U.S. 673 (1930) 6, 8, 11

Czaplicki v. The S.S. Hoegh Silvercloud, 351 U.S. 525 (1956) 4

City of Miami v. St. Joe Paper Co., 364 So.2d 439 (Fla. 1978) 3, 8

City of Miami Beach v. Smith, 551 F.2d 1370 (5th Cir. 1977) 4

Fletcher v. Peck, 10 U.S. 87 (1810) 9

ITT Rayonier, Inc. v. Wadsworth, 346 So.2d 1004 (Fla. 1977) 5

Memphis Light, Gas and Water Division v. Craft, 98 S.Ct. 1554 (1978) 6

INDEX OF AUTHORITIES (Continued)

Page

Natural Resources, Inc. v. Wineberg, 349 F.2d 685 (9th Cir. 1965), *cert. denied*, 382 U.S. 1010 4

Smith Bros. v. Williams, 131 So. 335 (Fla. 1930) 4, 6

State v. Zimring, 566 P.2d 725 (Hawaii 1977) 4

Terry v. Anderson, 95 U.S. 628 (1877) 8

United States Trust Co. v. New Jersey, 431 U.S. 1 (1977) 7, 8, 10

Waterman v. Smith, 94 So.2d 186 (Fla. 1957) 4

Wernle v. Bellemead Dev. Corp., 308 So.2d 97 (Fla. 1975) 4

Other Authorities

Florida Statutes, Chapter 712 ..... passim

in the

Supreme Court

of the

United States

CASE NO. 78-1401

CITY OF MIAMI,
a Florida municipal corporation,
Appellant,

vs.

ST. JOE PAPER COMPANY, a Florida corporation; SOUTHEAST PROPERTIES, INC., a Florida corporation; HUGH E. MATHESON, JR., individually; and SALLY S. DOMMERICH, formerly Sally S. Matheson, individually,
Appellees.

On Appeal from the Florida Supreme Court

REPLY TO MOTION
TO DISMISS OR AFFIRM

Appellee St. Joe Paper Co. ("St. Joe") has moved to dismiss or affirm. All other Appellees have joined in these motions.

Appellees necessarily concede that the subject Constitutional questions were timely and expressly raised and denied by all three levels of Florida courts. Appellees do not even deny that the questions presented are important: their only argument is that the City is incorrect on the merits of this appeal.

The federal questions presented by this appeal are substantial. Despite Appellant's plain demonstration of the Constitutional prohibitions of such a course, the Florida Supreme Court held the City divested of fee simple land ownership by Florida's Marketable Record Titles Act ("Florida's MRTA"). The Florida court held private interests to have acquired valid title to the City's vested property by virtue of the passage of thirty years from acceptance of a void, wild deed to property Appellees then actually knew was titled in the City.

REPLY TO RESTATEMENT OF THE FACTS

Appellees studiously ignore this basic fact: St. Joe did not own and had no valid claim to this property, and actually knew when it took its wild deed that the City in fact owned this property. St. Joe's arguments about "riparian rights and submerged lands appertaining thereto" were rejected as a matter of state law by the Florida Supreme Court. St. Joe's predecessors in putative title unlawfully filled the City's land and then purported to convey it to St. Joe. St. Joe's title search when it purchased necessarily revealed that it was being "offered" a tract which included City land. As the Florida Supreme Court held, St. Joe's deed was wild.[1]

St. Joe accuses the City of "misrepresenting" that the City had no notice of St. Joe's wild deed. Referring to its supposedly open "incidents of ownership," St. Joe argues that the City actually knew that St. Joe had stolen its land and therefore cannot be heard to demand constitutional notice.

[1] City of Miami v. St. Joe Paper Co., 364 So.2d 439, 445-448 (Fla. 1978).

The question of what facts charge a municipal corporation with actual notice of an adverse claim is not before this Court.[2] Florida's MRTA confers no notice. There were no facts before the Florida trial court except those alleged in the City's complaint: St. Joe had knowingly recorded a wild deed to the City's property in 1944; it then had sat back and hoped for the best. The trial court dismissed the complaint, holding that because that wild deed was recorded thirty-one years before this action, St. Joe held marketable title under Florida's MRTA.

The law in Florida is that a wild deed is a void instrument which confers no notice to the true owner.[3] The Florida Supreme Court did not purport to change this law (nor, without running afoul of the Federal Constitution, could it have).[4] The court did *not* hold that the City had notice or was charged with notice of St. Joe's wild deed. Instead, the court purported to respond to the lack of notice by saying that the City had notice of the passage of Florida's MRTA itself, and somehow, therefore, should have known to re-record its vested, fee simple title by January 10, 1974.

But Florida's MRTA on its face did not require every fee simple owner to re-record his deed every thirty years. A landowner has notice to re-record only if he has notice of a recorded instrument which could lawfully extinguish his ownership. The City had no adequate or valid notice of St. Joe's attempt to record a maverick deed, and therefore had no notice of a need to re-record.

Moreover, *even if* the City had had actual knowledge of the existence of St. Joe's wild deed (of which there is no evidence whatever on this record and

[2]St. Joe's thinly-disguised attempt to inject non-federal (and non-existent) issues such as estoppel and adverse possession are irrelevant to this appeal and are unsupported by the record. They were not considered by the courts below, and are contrary to the applicable law. See *Waterman v. Smith*, 94 So.2d 186 (Fla. 1957) (adverse possession will not lie against a municipality); *Wernle v. Bellemead Dev. Corp.*, 308 So.2d 97 (Fla. 1975) (acceptance of taxes cannot bar a city from contesting a void deed). *Cf. State v. Zimring*, 566 P.2d 725 (Hawaii 1977) (acceptance of taxes does not estop state to quiet title to accretion to the shoreline); *Beach Front Hotel Co. v. Sooy*, 197 Fed. 881 (3d Cir. 1912) (recorded plat showing shore line does not make estop grantee to claim his lands extend to high water mark). *See also Czaplicki v. The S.S. Hoegh Silvercloud*, 351 U.S. 525 (1956); *City of Miami Beach v. Smith*, 551 F.2d 1370 (5th Cir. 1977); *Natural Resources, Inc. v. Wineberg*, 349 F.2d 685 (9th Cir. 1965), *cert. denied*, 382 U.S. 1010.

[3]*Smith Bros. v. Williams*, 131 So. 335 (Fla. 1930).

[4]The Florida Supreme Court's decision does not hold or state that the City had notice of St. Joe's wild deed. The Court based its conclusion that Florida's MRTA validates a wild deed on its prior decision in *ITT Rayonier, Inc. v. Wadsworth*, 346 So.2d 1004 (Fla. 1977). In *ITT Rayonier* (decided during the pendency of this case), the court did say (for the first time in the history of Florida jurisprudence) that Florida's MRTA validates a wild deed, although in fact the deed in that case was not wild: a life tenant (*not* a stranger to the chain of title) purported to convey fee simple to herself and another as tenants in common. But the Court reasoned in *ITT Rayonier* that the statutory definition of "root of title" as "any title transaction *purporting* to create or transfer the estate claimed" (Fla. Stat. §712.01(2), emphasis added) embraced wild deeds. The decision in *ITT Rayonier* was *after* the City had been divested. St. Joe's representation at page 18 of its Motion that Florida courts had previously applied Florida's MRTA to wild deeds is incorrect.

which if it existed was certainly not conferred by Florida's MRTA), the City still did not have notice of a need to re-record. It was established Florida law, when the MRTA was enacted, when the City was divested, and when the City brought this suit, that a wild deed cannot be validated by a subsequent legislative act.[5]

The City did not have notice that Florida's MRTA could validate a wild deed. Even could the State *now* require landowners to take notice of wild deeds, there was no such requirement on January 10, 1974 (when, according to the Florida Supreme Court, the City was divested). The City therefore had no real opportunity to protect its interest. *See Brinkerhoff-Faris Trust & Savings Company v. Hill*, 281 U.S. 673 (1930).[6] *See also Memphis Light, Gas and Water Division v. Craft*, 98 S.Ct. 1554 (1978).

[5]*Smith Bros. v. Williams*, 131 So. 335. See also n. 4, supra.

[6]In *Brinkerhoff-Faris*, the plaintiff sought to enjoin an allegedly discriminatory tax assessment. State law at that time held that there was no administrative remedy. The trial court dismissed. The state supreme court held that there was an administrative remedy, but that the plaintiff in not seeking it was guilty of laches. This Court reversed, holding the plaintiff had been deprived of property with no real opportunity to be heard.

THE QUESTIONS ARE SUBSTANTIAL

Contract Clause

Appellees' motion ignores the impact of this Court's decisions in *Allied Structural Steel Co. v. Spannaus*, 98 S.Ct. 2716 (1978), and *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977). Appellees' reading of those two cases can only be seen as Appellees' suggestion that this Court recede from both decisions and remove Constitutional fetters from State legislatures. Obviously, this Court did not consider either case as a mere exercise in deciding a unique and unrepeatable situation. Had that been so, the Court presumably would have declined to hear either.

But this Court made clear in *Spannaus* and *United States Trust* that the Contract Clause is *not* a dead letter. The States may *not* impair an existing contractual right merely because some State interest would be served. To be upheld, an impairment must be both *reasonable and necessary* to serve a legitimate State interest. *United States Trust*, 431 U.S. at 25. And, as this Court held in *Spannaus*, 98 S.Ct. at 2723:

> The severity of the impairment measures the height of the hurdle the state legislature must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage. *Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.*
>
> [emphasis added]

Appellees disingeniously characterize Florida's MRTA as a mere retroactive statute of limitation, traditionally upholdable on the rationale that such statutes *do not impair* existing contractual obligations, but merely alter the remedies.[7]

But even the Florida Supreme Court recognized that this is not a mere statute of limitation.[8] *Florida's MRTA destroys a vested fee simple interest and creates title out of thin air.* This is not merely alteration of remedy: it is an impairment, indeed a destruction, of an existing, vested right.

Reasonable retroactive statutes of limitation may be upheld, *but only because they do not* impair and destroy vested rights. *See Terry v. Anderson*, 95 U.S. 628.

> [A] state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.

Brinkerhoff-Faris, 281 U.S. at 681.

Contrary to Appellees' claim, Florida's MRTA is *not* a mere statute of limitation, and was not so treated below. It deprived the City of vested, fee simple

[7]*Terry v. Anderson*, 95 U.S. 628 (1877). The clear inadequacy of such an analysis was noted in *United States Trust*, 431 U.S. at 26, n. 17.

[8]*City of Miami*, 364 So.2d at 443.

ownership, retroactively and without notice. The City's contract right[9] was totally destroyed.

As a sweeping combination of curative, limitation, and recording legislation which validates void instruments and creates title out of thin air, Florida's MRTA can therefore only be justified by an economic emergency. *Spannaus*, 98 S.Ct. 2716. Appellees do not and cannot argue that there was an economic emergency here. St. Joe argues that Florida's MRTA is reasonable because the City was "negligent" in protecting its interest. Such an argument could obtain only had the City been on notice of a need to re-record its fee simple title. It was not.

But even if "reasonableness" were a correct standard, Florida's MRTA, which divests a fee-holder in favor of a stranger to the title with no valid claim, is not reasonable.

The State's interest in simplying title conveyancing does not require or justify divestiture in favor of a person with no valid claim, or a grantee whose title examination necessarily demonstrates he is receiving a wild deed. Unlike recording statutes, which resolve disputes in favor of purchasers who have relied on the public record, and curative statutes, which confirm legitimate contracts frustrated by technical defects, Florida's MRTA allows a putative grantee to *ignore* the fact, ascertainable from the public record, that his "chain of title" does not exist.

[9]*Fletcher v. Peck*, 10 U.S. 87 (1810).

This validation of wild deeds does not legitimately simplify title searches. Florida's MRTA purports to allow a grantee to rely on a thirty year record chain of title. However, after the Florida Supreme Court's decision here, such a search would *not negate the possible existence of a "marketable" wild deed*. On the other hand, if Florida's MRTA did *not* (as Constitutionally it must not) apply to a wild deed, a grantee could still rely on the existence of a record chain of title, which is traceable to the sovereign, and ignore restrictions or conditions which are more than thirty years old. As this Court stated in *United States Trust*, 431 U.S. at 25:

> A state is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well.

Taking

St. Joe completely fails to respond to the City's argument that Florida's MRTA violates the Federal Taking Clause. St. Joe's simplistic analysis posits that because Florida's MRTA has been found to "concern" the public welfare, it is Constitutional. Such an approach ignores the analytical frameworks this Court has developed to insure that the constitutional protections of property and contract rights do not become "dead letters".

The City was vested with full fee simple ownership of this land. The State has now divested the City, purportedly to simplify title searches. As this Court stated in *United States Trust*, 431 U.S. at 19, n. 16, even such constitutionally protected contract rights may be taken for a valid public purpose, but *compensation must be paid*.

Due Process

St. Joe, although it does not specifically respond to the City's Due Process arguments, argues that the City somehow had notice to protect itself and that Florida's MRTA is therefore a reasonable exercise of the State's police power. But the City did *not* have notice, and even the cases St. Joe cites recognize that a person may not be deprived of a property right without "some real opportunity to protect it." *Brinkerhoff-Faris*, 281 U.S. 673.

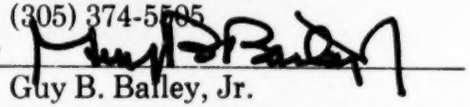
And even if the City did have notice of a need to re-record (which is not true), divesting a feeholder and allowing a putative grantee to ignore the public record, hardly "simplifies" title searches. And it is plainly not "reasonably necessary to promote the general welfare". *Spannaus*, 98 S.Ct. at 2731 (Brennan, J., dissenting).

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

GUY B. BAILEY, JR.
Suite 1820, One Biscayne Tower
Two South Biscayne Boulevard
Miami, Florida 33131
(305) 374-5505

By 
Guy B. Bailey, Jr.

OF COUNSEL:

JESSE C. JONES
Suite 1820, One Biscayne Tower
Two South Biscayne Boulevard
Miami, Florida 33131

April 17, 1979